

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 11, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Introduction of Page - Chase Bower	
RS20902	Relating to Proceedings in the Magistrate's Division of District Court; Amending Section 19-3945 Idaho Code, to revise jurors' and witnesses' fees and mileage.	Michael Henderson
RS20903	Relating to the Board of Commissioners of the Idaho State Bar; Amending Section 3-409, Idaho Code, to establish a license fee for senior members.	Michael Henderson
RS20850	Relating to Escape or Rescue of Prisoners; Relating to illicit conveyance of articles into Correctional Facilities	Brent Reinke, IDOC Kevin Kempf, IDOC
RS20882	A Joint Resolution Proposing an Amendment to Provide that the State Board of Correction shall have the control, direction and management of Adult Felony Probation and Parole.	Brent Reinke, IDOC Kevin Kempf, IDOC

**THERE WILL BE NO MEETING ON FRIDAY,
JANUARY 13, 2012**

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington
Vice Chairman Vick
Sen Davis
Sen Lodge
Sen McKague

Sen Mortimer
Sen Nuxoll
Sen Bock
Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds
Room: WW35
Phone: (208) 332-1317
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 11, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:30 p.m. and welcomed the members of the Committee. He also introduced the Page, Chase Bower.

RS 20902 **Relating to Proceedings in the Magistrate's Division of District Court. Michael Henderson**, legal counsel for the Idaho Supreme Court, explained that this legislation concerns defects or omissions in the laws as required under article V, section 25 of the Idaho Constitution. This would amend Idaho Code § 19-3945, which concerns juror and witness fees, by updating it and making it consistent with other statutes. It would have no impact on the general fund.

MOTION **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 20902**. The motion carried by **voice vote**.

RS 20903 **Relating to the Board of Commissioners of the Idaho State Bar. Mr. Henderson** explained that this is another legislation concerning defect or omissions in the laws and amends the statute setting license fees for Idaho attorneys to reflect amendments to the Idaho Bar Commission Rules. These amendments were approved by a vote of Idaho lawyers in November 2011, and have been approved by the Idaho Supreme Court.

MOTION **Senator Davis** moved, seconded by **Senator LeFavour**, to print **RS 20903**. The motion carried by **voice vote**.

RS 20850 **Relating to Escape or Rescue of Prisoners, and contraband introduced into a correctional facility. Kevin Kempf, Idaho Department of Corrections (IDOC)** explained this legislation repeals but consolidates 18-2503, 18-2510, and 18-2511, Idaho Code, which each details the introduction of some form of contraband into correctional facilities. Contraband which is defined, based on current contraband threats, in juvenile, county and adult state correctional facilities presents a serious security risk. **Mr. Kempf** asked permission to have **Tim Higgins**, Deputy Warden of the Virtual Prison Program and an expert in this subject matter, to continue the explanation.

Tim Higgins stated the main focus of the legislation is to create safer facilities by making it harder for inmates to continue their criminal behavior while incarcerated. Cell phones are the most sought after contraband in prisons, and are being used to participate in drug trafficking, and even targeting hits on citizens on the streets of Idaho. The intent of this legislation is to make it a felony to smuggle cell phones into the prisons. The current statute is outdated and doesn't address the latest contraband trends.

Senator Darrington asked Mr. Higgins to explain to the committee the problem with inmates having cell phones. **Mr. Higgins** stated that inmates have discovered with mobile phones, they may coordinate escapes, intimidate witnesses, arrange for drug drops, and order a retaliation against other prisoners. He continued to say the inmates were able to bypass the security system and continue to conduct criminal activity within prison walls.

Senator Davis questioned Mr. Higgins about the wording on page 2 of contraband being "...prohibited by statute, rule or policy..." and if they were making a violation of policy, a felony. **Mr. Higgins** replied that the wording was gleaned from other states that have similar legislation. With permission, **Mark Kubinski**, Attorney General/IDOC, who drafted the legislation approached the podium. **Mr. Kubinski** stated that further in that definition of contraband, it is not only a violation of statute, rule or policy, but it must also include "and the use of which could endanger the safety or security of the correctional facility."

MOTION **Senator Lodge** moved, seconded by **Senator Davis**, to print **RS 20850**. The motion carried by **voice vote**.

RS 20882 **Proposing an Amendment to Section 5, Article X, of the Constitution of the State of Idaho, Relating to the Control over State Prisons.** **Brent Reinke, Director of IDOC**, stated that the Idaho Criminal Justice Commission was established in 2005 with 25 members with all three branches of government represented and he was privileged to chair the Commission. Last year a question was raised by then State Appellate Public Defender (SAPD), Molly Huskey, about the constitutionality of misdemeanor probation. With permission, **Mr. Paul Panther, Attorney General of IDOC**, came to the podium to explain the legal elements involved. **Mr. Panther** explained that misdemeanor probation is handled at the county level where felony probation is handled by the Department of Corrections. This Joint Resolution will insert the word "felony" before the word "probation" in Article X, Section 5 to clarify that the Board of Correction's duty to supervise adult probation extends only to felony probation. The amendment would not invalidate statutes authorizing county supervision of misdemeanor probation.

MOTION **Senator Mortimer** moved, seconded by **Senator Vick**, to print **RS 20882**. The motion carried by **voice vote**.

Chairman Darrington addressed the Committee with some information of interest. He stated that Steve Bywater retired, and Paul Panther was appointed Chief of Criminal Division in the Attorney General's Office; Mark Kubinski is now the Attorney General of IDOC; Molly Huskey, former SAPD, has been appointed District Judge in Canyon County and will be formally sworn in on February 10, 2012. In addition, this morning the Governor appointed Sara Thomas as the State Appellate Public Defender and she will be before the Committee in due time for confirmation.

ADJOURNMENT **Chairman Darrington** reminded the Committee there would be no meeting on Friday, January 13th, and adjourned the meeting at 2:05 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 16, 2012

SUBJECT	DESCRIPTION	PRESENTER
RS20834	Relating to the Juvenile Corrections Act; amending, clarifying and correcting certain changes.	Sharon Harrigfeld, Executive Director
RS20907	Relating to Judges; making technical changes	Michael Henderson, Legal Counsel
RS20899	Relating to Homicide; to provide additional provisions relating to murder of the first degree	Holly Koole, Idaho Prosecuting Attorney Association
RS20878	Relating to Harassment, Intimidation or bullying of a student.	Kim Kane, Suicide Prevention Action Network (SPAN

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 16, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:30 p.m. and introduced the Intern, Alicia Lardieri to the Committee members. He then asked if there were minutes to approve.

MOTION **Vice Chairman Vick** moved that the minutes of **January 11, 2012** be approved as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

RS 20834 **Relating to the Juvenile Corrections Act.**
Sharon Harrigfeld, Executive Director of the Department of Juvenile Corrections, explained that this legislation would redefine the words "juvenile" and "juvenile offender" to correct confusion within the Juvenile Corrections Act. She also said certain references to the Department of Health and Welfare were deleted or changed to reflect Idaho Department of Juvenile Correction's responsibilities.

MOTION **Senator Mortimer** moved, seconded by **Senator Lodge**, to print **RS 20834**. The motion carried by **voice vote**.

RS 20907 **Relating to Judges.**
Michael Henderson, Legal Counsel for the Idaho Supreme Court, explained that this bill attempts to clean up references to older local courts (probate courts, police courts, and justices of the peace) and substitute references to magistrate judges. The bill would also make some technical changes of requirements that are no longer applicable.

MOTION **Senator LeFavour** moved, seconded by **Senator Nuxoll**, to print **RS 20907**. The motion carried by **voice vote**.

RS 20899 **Relating to Homicide.**
Chairman Darrington first introduced Sandee Meyer, Executive Secretary of the Idaho Prosecuting Attorney Association, to the committee members. **Holly Koole**, Idaho Prosecuting Attorney Association, explained that this legislation is to amend the offenses listed in Idaho's current "felony murder rule" and to add the crime of unlawful discharge of a firearm. The proposed change would add murders committed during "drive-by-shootings" to the list. Language was added that says "where a reasonable person would know or have reason to know that such building or vehicle was occupied" to make clearer the intent of the perpetrator.

Senator Bock asked Ms. Koole if during presentation of the bill she would bring information of what other states have done or are doing for comparison.

Vice Chairman Vick stated that there would be some fiscal impact because of people spending longer time in jail if convicted. **Ms. Koole** replied that if convictions, even though cases are minimal, it would depend on the amount of time given by the judge. **Vice Chairman Vick** asked if she could provide some numbers on the trends on this.

MOTION

Senator Bock moved, seconded by **Vice Chairman Vick**, to print **RS 20899**. The motion carried by **voice vote**.

RS 20878

Relating to Harassment, Intimidation or Bullying of a Student.

Kim Kane, Suicide Prevention Action Network (SPAN), explained that this legislation is the same that was approved by the Senate last year as S1105, but it never received a final consideration in the House. Ms. Kane said it is returning to provide a role for schools in preventing bullying in four main ways.

1. To make sure school staff, teachers, students and parents are informed that bullying is prohibited in Idaho schools and to outline the schools policy.
2. To make clear that teachers and school staff intervene when bullying occurs.
3. Provide training to teachers and staff on the most effective ways to address different kinds of bullying.
4. Districts should provide a set of consequences to use before they look at the infraction.

Finally, the legislation ensures that schools designate to whom reports of bullying are made so parents, students and staff have a place to go when they encounter bullying.

Senator Bock asked Ms. Kane to speak to the importance of keeping the penalty at a reduced level and, therefore, increasing the opportunity for success. **Ms. Kane** said that more effective than a stronger penalty is to emphasize prevention, intervention and counseling.

Senator Mortimer asked what changes would be made in the education system. **Ms. Kane** said what is being done now is not working and there is no uniformity statewide. **Senator Mortimer** said he would like a report from the Education Department of how this would affect our school districts.

MOTION

Senator McKague moved, seconded by **Senator LeFavour**, to print **RS 20878**. The motion carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 1:58 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 18, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - January 16	
RS20910	Relating to Injury to Children; Reporting of Abuse, Abandonment or Neglect	Holly Koole, Idaho Prosecuting Attorneys Association
RS20943	Relating to Guardians of Minors	Bob Aldridge, Trust Estate Professionals, Inc.
RS20942	Relating to the Uniform Prudent Investor Act	Bob Aldridge, TEPI
RULES REVIEW		
Docket No.	Sexual Offender Management Board (Pending)	
57-0101-1101 Page 88	Rules of the Sexual Offender Management Board	Kathy Baird, Management Assistant
	Idaho State Police	
11-1003-1101 Page 30	Rules Governing the Sex Offender Registry (Pending)	Dawn Peck, ISP Criminal Identification Manager
11-1002-1101 behind Green Divider	Rules Establishing Fees for Service - Idaho Criminal Justice Information System (Fee)	Dawn Peck
11-0301-1201 behind Salmon Divider, Page 3	Rules Governing Alcohol Testing (Temporary)	Matthew Gamette, ISPFS Quality Manager
11-0501-1101 Page 5	Rules Governing Alcohol Beverage Control (Temporary)	Lt. Bob Clements

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington
Vice Chairman Vick
Sen Davis
Sen Lodge
Sen McKague

Sen Mortimer
Sen Nuxoll
Sen Bock
Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 18, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Bock, and LeFavour

ABSENT/ EXCUSED: Senator Nuxoll

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Chairman Darrington called the meeting to order at 1:30 p.m. and stated that RS 20910 is withdrawn and would not be heard today, but would be rescheduled. He then asked if there were minutes to approve.

MOTION **Senator Mortimer** moved, seconded by **Senator LeFavour**, that the minutes of **January 16, 2012** be approved as written. The motion carried by **voice vote**.

RS 20943 **Relating to Guardians of Minors. Bob Aldridge**, representing Trust Estate Professionals, Inc. (TEPI) explained this bill would amend sections of the Idaho Code to give clear guidance to courts and to persons involved in a guardianship of the grounds, standard of proof, and methods for removal or termination of a guardian or for modification of the guardianship.

MOTION **Senator Mortimer** moved, seconded by **Senator Lodge**, to print **RS 20943**. The motion carried by **voice vote**.

RS 20942 **Relating to the Uniform Prudent Investor Act. Bob Aldridge**, TEPI, explained that this legislation simply adds "conservators" as well as guardians to the Uniform Prudent Investor Act.

MOTION **Senator LeFavour** moved, seconded by **Senator Mortimer**, to print **RS 20942**. The motion carried by **voice vote**.

RULES REVIEW **Chairman Darrington** turned the meeting over to **Vice Chairman Vick** to chair the Rules Review. **Vice Chairman Vick** introduced Kathy Baird, to present Rules of the Sexual Offender Management Board.

DOCKET NO. 57-0101-1101 **Rules of the Sexual Offender Management Board - Kathy Baird**, Management Assistant, explained that last year the Sexual Offender Classification Board was eliminated and replaced by a Sexual Offender Management Board, which assumed responsibilities. She stated that additionally, procedures for the designation of violent sexual predator (VSP) status was eliminated.

MOTION **Senator Bock** moved, seconded by **Senator Mortimer**, that the Committee approve **Docket No. 57-0101-1101**. The motion carried by **voice vote**.

**DOCKET NO.
11-1003-1101**

Rules Governing the Sex Offender Registry, Idaho State Police - Dawn Peck, Idaho State Police Bureau of Criminal Identification Manager, said this pending rule change was necessitated by the substantive changes to Title 18, Chapter 83, Sexual Offender Registration Notification and Community Right-To-Know Act made during the 2011 legislative session. The changes set out the appeals process, clarifies some of the definitions, defines the processes involved in the sex offender registration process, and defines law enforcement and other jurisdiction notifications, the expungement process and the determination of substantially equivalent or similar crimes.

Senator Mortimer asked Ms. Peck to explain 012.,07,c.i. of the rule concerning expungement of a record. He questioned if "dismissal of a withheld judgment" would not be of record and yet it says it will continue as record. **Ms. Peck** replied that the Sex Offender Registration Code states that it doesn't matter what form of withheld judgment and there have been several pieces of legislative action that have held that a withheld judgment dismissal does not preclude the individual from having to register. She said the way to get off the Sexual Offender Registry is under Title 18-8310, Idaho Code. **Senator Mortimer** said that someone he had talked to indicated that our laws do not allow a judge to actually expunge or take someone off of that record. He asked if that was correct. **Ms. Peck** said that procedures were outlined in Title 18-8310 IC of how a person can be relieved of their duty to register in the State of Idaho. **Senator Mortimer** asked if a judge had the ability to do that. **Ms. Peck** said that if someone had a withheld judgment on a crime that was aggravated or was a recidivist, the Idaho Code states that they may not be removed from the Registry. **Senator Mortimer** said he felt there was some inconsistency, but he would continue to look into it. **Ms. Peck** suggested that he look in 07.d, of the rule, to answer this concern.

MOTION

Senator LeFavour moved, seconded by **Chairman Darrington**, that the Committee approve **Docket No. 11-1003-1101**. The motion carried by **voice vote**.

**DOCKET NO.
11-1002-1101**

Fees for Services - Criminal Justice Information System, Idaho State Police. **Dawn Peck** presented this pending fee rule to the Committee. She explained that the fees currently collected do not cover the costs of processing the background checks or rolling fingerprints. The fund has rapidly depleted and in order to continue doing the work mandated by statute in these units, the fees need to be raised to meet the costs.

Ms. Peck explained further that the rule change will increase the cost for a non-criminal justice fingerprint based state background check to \$25, a state name check to \$20, and the fee for rolling fingerprints to \$10 with a \$5 fee for each additional copy. The fees outlined in this rule are authorized under Idaho Code § 67-3010. Ms. Peck told the Committee that this pending fee rule was published in September and they received no formal comments. However, this week they received communication from the Department of Health & Welfare and because of how this fee would affect their collection fees, the decision was that if this was approved, implementation would be delayed until Fall.

Senator Lodge asked that the Department of Education also be included in those discussions as well as the Department of Health & Welfare. **Ms. Peck** said they would delay implementation for all their customers and have a discussion giving them the time they need.

MOTION

Senator Lodge moved, seconded by **Chairman Darrington**, that the Committee approve **Docket No. 11-1002-1101**. The motion carried by **voice vote**.

**DOCKET NO.
11-0301-1201**

Rules Governing Alcohol Testing - Idaho State Police. Matthew Gamette, ISPFS Quality Manager, explained that this temporary rule only added "at least" in the proposed language to clarify that blood samples need to only contain a minimal concentration of the preservative sodium fluoride. Regardless of the amount of blood collected in the tube, the concentration of "at least" ten (10) milligrams of sodium fluoride per cubic centimeter of blood (as is proposed) is an adequate amount to maintain the evidentiary value of the sample.

MOTION

Senator Mortimer moved, seconded by **Chairman Darrington**, that the Committee approve **Docket No. 11-0301-1201**. The motion carried by **voice vote**.

Vice Chairman Vick turned the Committee back over to the Chairman.

ADJOURNMENT

There being no further business, **Chairman Darrington** said there would not be a meeting on Friday, January 20, and adjourned the meeting at 2:02 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 23, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - January 18, 2011	
RS20750	Relating to Service by Publication	Senator Bart Davis
RS20910C2	Relating to Injury to Children	Holly Koole
	<u>RULES REVIEW</u>	
Docket No.	Department of Corrections	
06-0101-1101	Rules of the Board of Corrections (Proclamation)	Lorenzo Washington, Policy Coordinator
06-0101-1201	Rules of the Board of Corrections (Emergency Proclamation)	Lorenzo Washington
	Division of Veterans Services	
21-0107-1101	Rules for Education and Training Programs for Veterans (Pending)	Phil Wyckliff
	Idaho State Police	
11-0501-1101 salmon divider, page 5	Rules Governing Alcohol Beverage Control (Temporary)	Lt. Bob Clements
Presentation	Idaho Department of Corrections Update	Brent Reinke, Director

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 23, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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Chairman Darrington called the meeting to order at 1:33 p.m. and the secretary called the roll.

RS 20750 **Relating to Service by Publication.** **Senator Bart Davis** explained that sometimes a summons and complaint is unable to be personally served. When this happens, that service can be done by publication. To do service by publication the Court must authorize it with an order. Some judges grant that order after it receives an appropriate affidavit; others technically read Idaho Code 5-508 to require a verified complaint. This bill allows the Court to enter an order after it considers either a supporting affidavit or verified complaint.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Mortimer**, to print **RS 20750**. The motion carried by **voice vote**.

RS 20910C2 **Relating to Injury to Children.** **Holly Koole**, Idaho Prosecuting Attorneys Association, explained the purpose of this legislation was to amend and move Idaho Code 16-1605 to increase the penalty in circumstances where the unreported act of abuse, abandonment, or neglect constitutes a felony. Under the current law in Title 16, Chapter 16 under the Child Protection Act, any person having reason to believe or observes that a child under the age of 18 years has been abused, abandoned or neglected and fails to report it as required in this section is currently a misdemeanor. The type of conduct that you would have to fail to report would have to be a current crime under Title 18, a felony; situations such as failure to report a murder, rape, or aggravated battery. **Ms. Koole** stressed that the underlying act was a very serious crime and could be charged as a felony. The remainder of these statutes that are being moved are not being changed. The other change that is proposed under this amendment deals with the statute of limitations for certain felonies. In Idaho there are currently four crimes that have no statute of limitations: (1) murder, (2) voluntary manslaughter, (3) rape, and (4) sexual abuse of a child or lewd conduct with a child.

Ms. Koole mentioned the publicized Casey Anthony case in Florida and the Penn State issue as perfect examples of someone knowing or seeing something happen and not reporting the incident. Currently, there are many times prosecutors are limited from filing the failure to report of rape or sexual abuse of a child or lewd conduct because of the statute of limitations.

Vice Chairman Vick asked Ms. Koole why they wanted to make this failure to report a felony. **Ms. Koole** responded that a felony would be charged if the underlying act was egregious.

MOTION **Senator Davis** moved, seconded by **Senator Bock**, to print **RS 20910C2**. The motion carried by **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Vick** to present the Rules Review.

**DOCKET NO.
06-0101-1101**

Rules of the Board of Correction (Proclamation) - Lorenzo Washington, Policy Coordinator for Idaho Department of Corrections (IDOC), reminded the Committee that the rulemaking process for the Board of Correction was a little different from most other Idaho agencies and that the Idaho Code exempts the Board of Correction from holding public meetings and participating in negotiated rulemaking. Pursuant to Idaho Code, the Board of Correction rules go into effect 30 days after publishing in the Administrative Bulletin. The Board added a subsection that serves notice that the Department will not disclose the names of the injection team members, escorts, or any information that could jeopardize the Department's ability to carry out an execution. The rule also clarifies execution unit configuration and occupants and allows one additional member of the offender's family and one additional member of the victim's family to witness the execution if they so choose. The Section on Advisory Boards is renumbered and revised to reflect current IDOC standard operating procedures.

MOTION

Chairman Darrington moved, seconded by **Senator Nuxoll**, to approve **Docket No. 06-0101-1101**. The motion carried by **voice vote**.

**DOCKET NO.
06-0101-1201**

Rules of the Board of Correction (Emergency Proclamation) - Lorenzo Washington explained this emergency rulemaking is necessary to reflect current IDOC practices and to confer a benefit upon the families of victims and other official witnesses to witness the execution. Because of the many execution responsibilities of the Idaho Maximum Security Warden, the Department created an administrative team to carry out the execution, selected a media team prior to the execution, and gave the director of IDOC flexibility in determining the number of persons allowed in the execution unit. There may be times when a condemned offender received the death penalty for crimes committed in multiple jurisdictions or multiple cases, requiring adjustments to be made to accommodate persons who were victim to the crime the offender was condemned for.

Vice Chairman Vick asked why the distinction between family members of the victim and two friends or family members of the offender allowed in the execution unit. **Mr. Washington** asked for the director to reply. **Director Reinke** explained that in the past there was concern that because of the length of time served, an attorney or spiritual advisor might be requested to attend. This gives that flexibility.

Senator Davis asked a question of Chairman Darrington. How do we get a Proclamation two days after the beginning of the Legislative Session that has already been adopted. **Chairman Darrington** said there had been very few changes to Administrative Rules, but would like for Mr. Kubinski to further address the issue. **Mr. Kubinski**, lead Deputy Attorney General, IDOC, said that following the Rhoades execution prior to Thanksgiving, the Department undertook a review of the standard operating procedures and as a result of that review process, modifications were made to policy and some changes necessitated changes to Administrative Rules and required an Emergency Proclamation due to the likelihood of another execution this spring. **Senator Davis** said he understood the need, but did they have jurisdiction to consider this rule at this time. **Mr. Kubinski** said the Department thought this was the correct approach. **Senator Davis** suggested the Committee get direction from the Administrative Rules Coordinator at the next meeting.

Vice Chairman Vick said without objection, they would delay action on this docket until further information.

**DOCKET NO.
21-0107-1101**

Rules for Education and Training Programs for Veterans (Pending) - Phil Wyckliff, Division of Veterans Services, explained that the Veterans Education Program was transferred to Veterans Services in 2009. The rules governing the program remained, however, in the State Board of Education. This rule change corrects the oversight.

MOTION

Senator Lodge moved, seconded by **Senator Mortimer**, to approve **Docket No. 21-0107-1101**. The motion carried by **voice vote**.

**DOCKET NO.
11-0501-1101**

Rules Governing Alcohol Beverage Control (Temporary) - Lt. Bob Clements explained this temporary rule provides a definition of "Multipurpose Arena" currently listed in Section 23-943, Idaho Code, and clarifies existing rules providing additional information for licensees to ensure compliance with regulations and allow more consistent enforcement of alcohol beverage laws. He stated that the rule provides specific circumstances when minors are permitted or prohibited, considering modern business concepts and the specific types of establishments. This rule also protects public safety by restricting minors from primarily drinking establishments, regulating "over/under" clubs.

Lt. Clements said there were also requirements to get a Multipurpose endorsement which includes serving various types of foods so it's not primarily a drinking establishment. The Licensee must also submit a security plan to the director and the local law enforcement agency for review and approval. Lt. Clements said the Licensee should provide a schedule of events for the upcoming month, showing date and time of each event during which alcohol service is planned.

Senator LeFavour stated that she did not understand the authority and restriction of content for events. **Lt. Clements** responded that they needed to assess situations regarding gang participation and keep limits on certain types of activities that would affect public safety.

MOTION

Senator Mortimer moved, **Chairman Darrington** seconded, to approve **Docket No. 11-0501-1101**. Discussion: Senator LeFavour and Senator Davis still had concerns with the authority issue. The motion carried by **voice vote**.

**DOCKET NO.
06-0101-1201**

Vice Chairman Vick called Dennis Stevenson, Administrative Rules Coordinator, to the podium to discuss the previous proclamation Docket No. 06-0101-1201. **Senator Davis** asked Mr. Stevenson if it was appropriate for the Committee to consider it today and act on it today. **Mr. Stevenson** said that it was. **Senator Davis** then asked if this emergency proclamation was akin to a Temporary Rule that requires a rejection of one of the bodies, or does it require both bodies to reject which is more akin to a Pending Rule. **Mr. Stevenson** said it was more akin to a Pending Rule. **Vice Chairman Vick** said a motion was in order for Docket No. 06-0101-1201.

MOTION

Senator Davis moved, seconded by **Senator LeFavour**, to approve **Docket No. 06-0101-1201**. The motion carried by **voice vote**.

PRESENTATION

Idaho Department of Corrections Update

Brent Reinke, Director, presented an update of the department and told how the incarcerated population had grown since 2004. If current FY12 trends continue, Idaho will have a 4.5% prison growth rate. He talked of the issues with contraband, a major problem in the prison system. He stated that 32,000 phone messages were made from within the prison to the outside. Director Reinke outlined the Department's strategic initiatives for FY12 as follows:

- Reduce staff turnover
- Population management through the Manage All Populations (MAP) group
- Substance use disorder services (SUDS) implementation

- Sex Offender Management Board implementation
- Secure mental health facility development
- Management and leadership development
- Commitment to Quality, quality assurance initiative

MOTION

Senator LeFavour moved, seconded by **Vice Chairman Vick**, to approve the minutes of **January 18, 2012** as written.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:46 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 25, 2012

SUBJECT	DESCRIPTION	PRESENTER
RS20972	Relating to the State Victim Notification Fund	Mike Kane
RS20973	Relating to the Control of Venereal Diseases	Mike Kane
RS21014	Relating to Execution; Amending Section 19-2716	Brent Reinke
RS21011	Relating to Execution; Amending Section 19-2718	Lamont Anderson
RS21016	Relating to Execution; Amending Section 19-2715	Lamont Anderson
RULES REVIEW		
Docket No.	Idaho State Police (Pending Rules)	
11-1101-1101	Rules of the Idaho Peace Officer Standards & Training Council	William L. Flink, Division Administrator
11-1101-1102	Rules of the Idaho Peace Officer Standards & Training Council	William L. Flink
11-1101-1103	Rules of the Idaho Peace Officer Standards & Training Council	William L. Flink
11-1102-1101	Rules of the Idaho Peace Officer Standards & Training Council for Juvenile Detention Officers	William L. Flink
11-1106-1101	Rules of the Idaho Peace Officer Standards & Training Council for Misdemeanor Probation Officers	William L. Flink
Department of Juvenile Corrections		
05-0102-1101	Rules and Standards for Secure Juvenile Detention Centers (Pending)	Sharon Harrigfeld
Presentation	Department of Juvenile Corrections Update	Sharon Harrigfeld Director

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 25, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy (McKague), Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:32 and asked the Secretary to call the roll.

RS 20972 **Relating to the State Victim Notification Fund.** **Mike Kane**, representing the Idaho Sheriff's Association, said they were proposing a way of obtaining sustainable funding for the victim and witness notification system, known as VINE. The concept is to add a \$10 one-time fee at time of conviction for a misdemeanor or felony. It is projected that this will raise enough money to maintain the program. Any excess fees generated will be turned over to the Victim Restitution Fund. **Chairman Darrington** stated that several years ago a constitutional amendment was passed providing for victim notification. **Mr. Kane** said that was correct and this assists the state and the local entities in fulfilling the constitutional function of keeping victims notified of the status of the offenders. **Chairman Darrington** remarked that Mr. Kane seemed to be pleased with the vendor and satisfied with the operation of the program throughout the state and the fear was that it would be interrupted with the absence of funding which would make us out of compliance. **Mr. Kane** said that was correct. **Vice Chairman Vick** asked if they had approached JFAC for funding as an alternative. **Mr. Kane** said they had sent an email to JFAC and given the financial crisis at the time, they thought this was the best avenue.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll** to print **RS 20972**. The motion was carried by **voice vote**.

RS 20973 **Relating to the Control of Venereal Diseases.** **Mike Kane** explained the purpose of this bill is to modernize the law regarding STD testing in correctional facilities by adding appropriate STDs and eliminating another, and by reducing the need to test for STDs in certain cases. Right now everyone in the state that is incarcerated must be tested for venereal diseases. You will note that we have eliminated testing for those with drug related charges in Section (4). That would mean that every juvenile arrested with a small bag of marijuana or drug paraphernalia must be tested for VD at a significant expense on the state and local correctional entities. There are lots of other ways to test for venereal diseases including those who might share bodily fluids. The second part is adding the most prevalent venereal disease in the state which is chlamydia and also hepatitis C and eliminating chancroid, which is a tropical disease.

Senator Malloy asked why "drug related" charges would be stricken from the language since the sharing of needles is a very common way for the exchange of bodily fluids, possibly causing STDs. **Mr. Kane** said that was right, however, if a young person gets arrested for having marijuana or drug paraphernalia that would have nothing to do with the exchange of bodily fluids. It's a significant burden on the state and for that reason it should be eliminated from this section.

MOTION

Senator Nuxoll moved, seconded by **Senator LeFavour** to print **RS 20973**. The motion carried by **voice vote**.

RS 21014

Relating to Execution. Brent Reinke, Director of Idaho Department of Correction (IDOC), explained that Idaho recently carried out its first execution in 17 years. During preparations to carry out this order, a few issues were discovered in Idaho's death penalty statutes that needed to be addressed. As a result, the Department and the Attorney General's office present a package of three statute changes. Director Reinke gave an overview of the key procedural issues. Deputy Attorney General Lamont Anderson will address two of these proposed amendments. **Director Reinke** requested that Mark Kubinski, the lead Deputy Attorney General for the Department of Correction, be allowed to speak to RS 21014.

Mark Kubinski explained that in 2009, there was an amendment to the Idaho Code to remove the firing squad as an alternative means of execution. In addition, language relating to an exemption from the practice of medicine and pharmacy was also removed. As a result of the execution last November and that experience, the Department is seeking to amend 19-2716 to reinsert those provisions and to provide a statutory immunity for the individuals participating in executions. Subsection (2) clarifies that carrying out an execution is not the practice of medicine and that the director and those acting under his authority are exempt from any legal departments governing the practice of medicine. Subsection (3) allows for any entity authorized to possess controlled substances may distribute to the director and also provides those entities with immunity from liability as a result of the condemned person's death. Subsection (4) authorizes the director of the department to contain, possess, and store controlled substances for purposes of carrying out an execution and exempts the director from any legal requirements governing pharmacy and controlled substances. He stated that also any individuals participating in the execution are immune from civil or criminal liability as a result of the death and would prevent a wrongful death action being brought against them. Lastly, the proposed amendment contains an emergency clause.

Senator Davis asked if the language that was inserted was the same language as before or something different. **Mr. Kubinski** said it was not identical, but it was substantially similar with respect to the practice of medicine and pharmacy. The immunity for providing chemicals to the department was not in the previous version of the statute. **Senator Davis** suggested that Subsection (2) was pretty broad about who could administer the drugs to the inmate. **Mr. Kubinski** said that was not the intent of the statute and the corresponding administrative rules and the department's standard operating procedure was more detailed in how the execution was carried out. **Senator Davis** said he recognized that it said all persons authorized by the director to participate in the execution, but he thought there should be language that tied it to some administrative process for the director in qualifying those persons to participate in the execution. **Mr. Kubinski** replied that the language in Subsection (2) was in previous law prior to 2009.

Senator Mortimer said he had some of those same concerns that Senator Davis pointed out and thought it needed further clarification. **Senator Bock** asked to bring back the Director for a question. He asked if there were limitations elsewhere in statute as to who you might appoint to participate in the process. **Director Reinke** replied there were not. He said although this is broad, it is outlined in the standard of operating procedure and is extremely detailed. **Senator Bock** commented that there was no other authority in any other statute or rule that specifically limits who can be appointed. Since statute takes precedence over any rules or procedures, you might have more authority than you want. **Director Reinke** stated that there was much scrutiny over each step and every word by many attorneys during this past execution. **Senator LeFavour** said she hated to think of someone being required to take another's life. She said that in worst case scenarios and for

future directors, perhaps a tightening of the verbiage would be helpful. **Director Reinke** stated that participation was unquestionably voluntary. There was no one that served or worked in the facility or on any facet of that execution that did not voluntarily attend. He further stated that if the language needed to be tightened, it would be done.

MOTION **Senator Bock** moved, seconded by **Senator LeFavour**, to have **RS 21014** returned to the sponsor. The motion carried by **voice vote**.

RS 21011 **Relating to Execution. Lamont Anderson**, Assistant Attorney General, explained this amendment is to clarify that upon execution, the death warrant is to be returned to the district court, making this procedure consistent with Idaho Code 19-2715.

MOTION **Senator Davis** moved, seconded by **Vice Chairman Vick**, to print **RS 21011**. The motion carried by **voice vote**.

RS 21016 **Relating to Execution. Lamont Anderson** explained this amendment seeks to clarify the process of obtaining a death warrant, including specifying a time during which the warrant must be obtained, sets forth a process for obtaining successive warrants if necessary, and clarifies responsibilities if an execution does not proceed. Some language was changed to reflect federal practices. **Senator Davis** asked about the "communication proceeding" pursuant to section 20-240, Idaho Code. **Mr. Anderson** said that was a typo and should have read "commutation proceeding."

MOTION **Senator Mortimer** moved, seconded by **Senator Lodge**, to print **RS 21016** with correction of the word, commutation. The motion carried by **voice vote**.

Rules Review of Idaho State Police (Pending Rules) with **Vice Chairman Vick**, presiding.

DOCKET NO. 11-1101-1101 **Rules of the Idaho Peace Officer Standards & Training Council. William L. Flink**, POST Division Administrator, explained the rule defines the terms "direction" and "supervision" as it relates to reserve officers. Under "direction," it allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. The second definition, "supervision," allows a Level I reserve officer to work by himself, but there must be a full-time peace officer of the agency working at the same time. Section 071 establishes that the Basic Misdemeanor Probation Academy may operate as a closed campus if POST has dorm space available and clarifies that a student must attend all basic academy classes to successfully complete the course. Mr. Flink said Sections 095 and 174 establishes criteria for obtaining credit toward higher certifications for officers who formerly served as military law enforcement officers. The requirement that communication specialists meet the minimum employment standards for age and traffic record is removed as well as references to the Advanced Dispatch Academy which is no longer offered. The rule removes confusing language in reference to canine team training and certification requirements. The list of explosive substances used for detection canine team certification is updated.

Senator Malloy asked with the difference of supervision for Level I and Level II officers, would they not be acting independent of one another. **Mr. Flink** said they were acting as a team, and since they only had 25 hours of training, POST Council believed they needed supervision.

Vice Chairman Vick told Mr. Flink that he had a letter from **Oliver Chase** that raised a question that this rule classifies all military law enforcement experience as the same and was not fair.

Mr. Flink said it was a long standing process in POST history and the POST Council felt this was proper in evaluating training. The training may have been as a security guard and not in line with performing law enforcement functions. **Vice Chairman Vick** asked if the practice had always been to give three months of law enforcement experience credit for each year of military service. **Mr. Flink** said that was the practice, but it was not in rule.

Senator Davis suggested that POST may be undervaluing the service and experience of the military. He wondered what standards could be adopted that would take advantage of the disparity of applicants. It appears to be a problem. **Mr. Flink** said that was what Council wrestled with and they were looking for consistency.

Oliver Chase came to the podium, representing himself, and reiterated the concerns that were identified in his letter. He said his concern is the discrimination against veterans. **Senator Davis** asked how would he write the rule. **Mr. Chase** said he would evaluate everyone based on their experience. **Senator Davis** asked if he was troubled by the disparity in the classification and what they were doing in reviewing or setting a standard for military police service. **Mr. Chase** said that was right. **Senator Mortimer** asked if it was true that some other officer coming in for POST certification with previous experience is being reviewed on a personal basis and qualifications before he is given a certification. **Mr. Flink** said that was correct. **Senator Mortimer** said then that is not the case with our military personnel. **Mr. Flink** said that was correct.

- MOTION** **Senator Mortimer** moved, seconded by **Senator Malloy**, to adopt **Docket No. 11-1101-1101** with the exception of Subsection 095, 02 and 174, 02.
- DISCUSSION** **Senator Lodge** asked Chairman Darrington what the procedure was if those two sections were excluded. **Chairman Darrington** said it would be necessary for the Committee to draft a resolution formally rejecting that section of the rule and that resolution would have to pass this Committee and the floor of the Senate, the House Committee and the floor of the House.
- SUBSTITUTE MOTION** **Senator LeFavour** made a substitute motion, seconded by **Senator Lodge**, to adopt **Docket No. 11-1101-1101** with the exception of Subsection 095, 02, c and 174, 02, c. The motion failed.
- MOTION** **Chairman Darrington** moved, seconded by **Senator Davis** to adopt **Docket No. 11-1101-1101**.
- SUBSTITUTE MOTION** **Senator Mortimer** made a substitute motion, seconded by **Senator Malloy** to adopt **Docket No. 11-1101-1101** with the exception of Subsections 095, 02, c. and d. and 174, 02, c. and d. **Senator Bock** requested a roll call vote. The motion carried 5 to 4 with Vice Chairman Vick, Senators Malloy, Mortimer, Nuxoll, and LeFavour voting aye, and Chairman Darrington, Senators Davis, Lodge and Bock voting nay.
- DOCKET NO. 11-1101-1102** **Rules of the Idaho Peace Officer Standards & Training Council. William L. Flink** explained that there were some technical errors in Sections 91 and 92 and POST Council would like to rewrite after subsequent review and return it at a future meeting.
- ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AMENDED #1 AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 30, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - January 23, 2012	Senator Malloy
<u>RS21015</u>	Relating to Telegraphs	Michael Henderson, Legal Counsel for the Idaho Supreme Court
<u>S 1213</u>	Relating to Proceedings in the Magistrate's Division of the District Court	Michael Henderson
<u>S 1222</u>	Relating to Judges; technical corrections	Michael Henderson
<u>S 1232</u>	Relating to the Uniform Prudent Investor Act	Robert L. Aldridge, Trust Estate Professionals, Inc.
<u>S 1233</u>	Relating to Guardians of Minors	Robert L. Aldridge
<u>S 1219</u>	Relating to the Juvenile Corrections Act; technical corrections	Sharon Harrigfeld, Director
RULES REVIEW		
Docket No.	Department of Juvenile Corrections	
<u>05-0102-1101</u>	Rules and Standards for Secure Juvenile Detention Centers (Pending Rule)	Sharon Harrigfeld, Director
Presentation	Department of Juvenile Corrections Update	Sharon Harrigfeld

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington	Sen Mortimer
Vice Chairman Vick	Sen Nuxoll
Sen Davis	Sen Bock
Sen Lodge	Sen LeFavour
Sen Malloy(McKague)	

COMMITTEE SECRETARY

Leigh Hinds
Room: WW35
Phone: (208) 332-1317
email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 30, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Malloy (McKague), Mortimer, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator Lodge

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:30 p.m. and asked if there were minutes to approve.

MOTION **Senator Malloy** moved, seconded by **Senator Nuxoll**, to approve the minutes of **January 23, 2012** as written. The motion carried by **voice vote**.

RS 21015 **Relating to Telegraphs.** **Michael Henderson**, legal counsel for the Idaho Supreme Court, explained this legislation was recommended by the Idaho Supreme Court to correct defects and omissions in the law. The bill would amend Section 19-616 and 19-617 of the Idaho Code. Section 19-616 dealing with arrest warrants sent by telecommunication or facsimile would be made consistent with the procedure set forth in Rule 4(g) of the Idaho Criminal Rules. Section 19-617 which addresses the procedure for an officer to send a telegraphic warrant would be repealed.

Mr. Henderson further explained this bill would repeal Section 62-414, 62-415, 62-416 and 62-417 which requires railway corporations to send and post telegraphic notifications of late arrival of trains and the penalties associated therewith.

MOTION **Senator Nuxoll** moved, seconded by **Senator Malloy**, to print **RS 21015**. The motion carried by **voice vote**.

S 1213 **Relating to Proceedings in the Magistrate's Division of the District Court.** **Michael Henderson** detailed the defects and omissions of Idaho Code Section 19-3945, concerning juror and witness fees that would be remedied by S1213. Mr. Henderson explained that S1213 would remove obsolete references to examining Magistrates and probate and justice courts and refers instead to the Magistrate Division of district court and that witnesses in those courts would receive the same fee and mileage payments as witnesses in the district court under Idaho Code Section 19-3008. Mr. Henderson further explained that jurors in coroner's inquests would receive the same fee and mileage as other jurors receive under Idaho Code Section 2-215.

MOTION **Senator Bock** moved, seconded by **Senator Mortimer**, that **S1213** be sent to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1222 **Relating to Judges.** **Michael Henderson** explained that S1222 would remove references to probate judges and justices of the peace and substitute those references with magistrate division or district court. It also repeals two obsolete statutes: Idaho Code Section 19-3009 a provision that limited the ability of courts to subpoena witnesses from outside the county; and Idaho Code Section 55-717, which pertains only to acknowledgement of a document before a justice of the peace.

Vice Chairman Vick questioned language contained in S1222 pursuant to marriage licenses. **Mr. Henderson** explained the changes were because of reference to justice of the peace and that the mention of specific religious groups was unnecessary.

MOTION **Senator LeFavour** moved, seconded by **Senator Nuxoll**, that **S1222** be sent to the floor with a do pass recommendation. The motion carried by **voice vote**.

S 1232 **Relating to the Uniform Prudent Investor Act. Robert Aldridge**, Trust & Estate Professionals of Idaho, explained that S1232 amends Idaho Code Section 68-514, part of the Uniform Prudent Investor Act, to properly refer to conservators. The original language in Section 68-514 refers to the general term "guardian", which in some states, but not in Idaho, refers to both guardians and conservators. Mr. Aldridge explained further that in almost all cases, conservators, not guardians are the fiduciaries handling the financial affairs of the protected person. The term "guardian" is kept because in some cases guardians will actually handle funds for the ward.

MOTION **Senator Malloy** moved, seconded by **Vice Chairman Vick**, that **S1232** be sent to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1233 **Relating to Guardians of Minors. Robert Aldridge**, stated that an Idaho Supreme Court Case in 2011 deemed the Idaho Code providing for termination of a minor guardianship was incomplete and essentially only covered removal or resignation. Mr. Aldridge explained that this bill would amend Idaho Code, Section 15-5-210 and 15-5-212 to add the provisions contained in existing Section 15-5-212A which was enacted in 2007. He further explained the result would give clear guidance to courts and to persons involved in guardianship specifying the grounds, standard of proof, and methods for removal or termination of a guardian or for modification of the guardianship.

MOTION **Senator Mortimer** moved, seconded by **Senator LeFavour**, that **S1233** be sent to the floor with a do pass recommendation. The motion carried by **voice vote**.

S 1219 **Relating to the Juvenile Corrections Act. Sharon Harrigfeld**, Director of the Department of Juvenile Corrections, explained that S1219 was housekeeping legislation regarding the Juvenile Corrections Act. Director Harrigfeld detailed the clarifications made to the terms "juvenile" and "juvenile offender" which would correct confusion in the Juvenile Corrections Act. Director Harrigfeld stated S1219 would also delete or change references in the Act to the Department of Health and Welfare to reflect Idaho Department of Juvenile Corrections and would allow funding for substance abuse treatments to be appropriated.

Senator Davis clarified confusion concerning sections that had previously been repealed.

MOTION **Senator LeFavour** moved, seconded by **Senator Malloy**, that **S1219** be sent to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Rules Review - Department of Juvenile Corrections

DOCKET NO. 05-0102-1101 **Vice Chairman Vick** introduced **Director Sharon Harrigfeld** of the Department of Juvenile Corrections to present Docket No. 05-0102-1101. **Director Harrigfeld** summarized those in the Department involved in the rules review for the Juvenile Detention Center. The rules include compliance with the Prison Regulation Act, the use of chemical agents has been clarified and the use of electric shock weapons has been prohibited unless used by law enforcement officers responding to a call.

Senator Malloy questioned whether one individual was present during the screenings or if a second individual was present. **Director Harrigfeld** responded that sometimes a medical authority would not be available to do the screening. **Senator Malloy** expressed concern that an officer could be accused of inappropriate conduct.

Discussion ensued with questions by **Senator Malloy** and **Senator Davis** concerning the medical screening performed by Juvenile Officers in the event medical examiners were not available. **Director Harrigfeld** addressed all concerns.

MOTION **Senator LeFavour** moved, seconded by **Senator Mortimer**, to approve **Docket No. 05-0102-1101**. The motion carried by **voice vote**.

PRESENTATION **Director Sharon Harrigfeld** of the Department of Juvenile Corrections presented an update of the department. The Director reviewed the Juvenile Corrections Mission statement, the projected and actual numbers of juveniles treated in the program, as well as explaining the different programs; Incentive, Re-entry and Mental health. The roles and responsibilities of the Department with Substance Use Disorder Services (SUDS) were explained. The program costs and future expenditures were detailed. Director Harrigfeld highlighted the current facility locations and noted that the department exceeded the national average on at least 75% of the critical measures and 50% of the reintegration measures. The Director reviewed staff needs and training and the staff turnover rate which is slightly higher than the Idaho statewide average.

Director Harrigfeld answered questions posed by **Senators Davis, Nuxoll** and **LeFavour** concerning substance abuse, budget cuts and if budget restraints have affected the performance of the Department. The Director stated that there was an increase in more serious problems seen by the Department, and more staff training was necessary for the staff to handle such problems.

Vice Chairman Vick questioned the Director concerning the mental health diagnosis. Anxiety, depression, bipolar and post traumatic stress disorder were the most frequent diagnosis. When questioned if one of the mental health disorders were more prevalent to which she replied she did not have any data relating to that.

Budget questions were raised by **Senator Mortimer** with comments by **Chairman Darrington** and **Senator Davis**. **Director Harrigfeld** answered budget concerns as well as efforts by the local entities to assist with the juveniles, thus keeping them at home and in their own schools. The Director indicated that 33% of the budget from the Department is given back to the local county entities.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:44 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 01, 2012

SUBJECT	DESCRIPTION	PRESENTER
RS21013	Relating to the Traffic Safety Education Program	William L. Flink
S 1253	Relating to Service by Publication	Senator Bart Davis
S 1221	Relating to Homicide	Holly Koole
RULES REVIEW		
Docket No.	Idaho State Police (Pending Rules)	
11-1101-1102	Rules of the Idaho Peace Officer Standards & Training Council	William L. Flink, Division Administrator
11-1101-1103	Rules of the Idaho Peace Officer Standards & Training Council	William L. Flink
11-1102-1101	Rules of the Idaho Peace Officer Standards & Training Council for Juvenile Detention Officers	William L. Flink
11-1106-1101	Rules of the Idaho Peace Officer Standards & Training Council for Misdemeanor Probation Officers	William L. Flink

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen Malloy(McKague)

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 01, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:32 p.m. and asked if there were minutes to approve.

MOTION **Senator Nuxoll** moved, seconded by **Senator Malloy**, that the minutes of **January 25, 2012** be approved, as amended. The motion carried by **voice vote**.

Chairman Darrington said **S 1221** had been pulled off today's Agenda at the request of the sponsor.

RS 21013

Relating to the Traffic Safety Education Program. **William L. Flink**, Division Administrator of the Idaho State Police, explained this legislation is to enable counties and cities to establish traffic safety programs, which law enforcement officers may offer at their discretion to traffic violators in lieu of issuance of a traffic violation citation. The option to attend the traffic safety education program would be voluntary and participation would serve as a refresher course in safe driving for motorists who chose to attend them. Counties and cities will be allowed to charge a fee for such programs, however the program fee could not be greater than the established fine for the traffic citation. A portion of those fees would be dedicated to the peace officer standards and training fund and to the ISTARS technology fund. This measure is intended to keep these plans solvent while providing a community policing and traffic safety tool for participating jurisdictions. An individual who fails to attend a traffic safety education program after voluntarily accepting the option may be charged with the original infraction. Mr. Flink requested that **Mr. Jerry Mason**, Association of Cities, address the cities' position on this proposed legislation and **Chief David Moore**, Blackfoot Police Department, comment on their position.

Mr. Mason stated that one key feature is that the proposal is voluntary on all fronts. It's voluntary as to whether a city or county chooses to implement the traffic school. It's voluntary as to whether an officer chooses to offer the traffic school to a motorist. It's voluntary whether a motorist chooses to accept the option. Some cities have been doing this, for example, Post Falls has been doing it for almost ten years. The citizens reaction to this has been gratifying. Many motorists have said they were glad to be educated on the changes that have come about. **Chairman Darrington** commented that the funding would be at the same level as if they had received the citation. **Chief Moore** said they support the legislation, and he added that the traffic safety school's prime target is the older generation that have not been through drivers training in a lot of years and were unaware of changes in the laws and also the younger group that are just learning good driving habits.

Senator Malloy asked who had authorization to certify schools or programs. **Mr. Mason** said no one, but the police department was having their police officers take national safety council "train the trainer" education. It's an opportunity for law enforcement to build some community relationships with individuals. **Senator Malloy** asked if a private entity wanted to start a school, how would they become authorized to run these programs. **Mr. Mason** said there were a number of private providers that the Idaho Department of Transportation certify at the state level to provide traffic education to take points off of someone's record.

MOTION **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 21013**. The motion carried by **voice vote**.

S 1253 **Relating to Service by Publication.** **Senator Bart Davis** explained this bill allows the Court to enter an order after it considers either a supporting affidavit or verified complaint. When a summons and complaint is unable to be personally served, that service can be done by publication.

MOTION **Senator Mortimer** moved, seconded by **Senator Nuxoll**, to send **S 1253** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Vick** to preside over the Rules Review. **Vice Chairman Vick** stated that the first rule of the Idaho Peace Officer Standards & Training Council, Docket No. 11-1101-1102 was going to be withdrawn because of the errors in it, but they had learned that could not be done. **Mr. Flink** will explain the rule and point out the technical corrections and the Committee will take action accordingly.

DOCKET NO. 11-1101-1102 **Rules of the Idaho Peace Officer Standards & Training Council - Mr. Flink** explained this rule requires the POST Division Administrator to report decertification proceedings to the POST Council on a regular basis; identifies the conduct that may constitute cause for decertification; requires an officer charged with a felony or misdemeanor to notify his agency head within five business days; requires an agency head to notify POST within fourteen days of learning of the charge; allows an agency head intending to hire a decertified officer to petition the Council, ten years after the date the officer was decertified, for reconsideration for law enforcement officer employment; and establishes the due process procedures. There was a flaw in this process; a piece left out of the Attorney General's (AG's) rule and what the subsection says is "that any agency that promulgates its own procedure shall include in rule and adopt its own procedure of findings of fact that states the reasons why the relevant portion of the AG's rules were inapplicable to be used under these circumstances." Mr. Flink said they had failed to put the reason 'why' into the rules.

Senator Davis asked what if they approve the rule and upon sine die it becomes a temporary rule. **Dennis Stevenson**, Administrative Rules Coordinator, said that was a possibility. **Senator Davis** asked if the Idaho State Police would be required, if the Committee approved the rule, to follow a rule that does have a fatal flaw in it. **Mr. Stevenson** said that might make for a difficult issue. **Vice Chairman Vick** asked if they would have to bring that temporary rule before the Committee. **Mr. Stevenson** replied that they would not.

Vice Chairman Vick asked Mr. Flink what the effect would be if they approved this rule without Section .091 and .092. **Mr. Flink** said that would be consistent with what the House Judiciary & Rules Committee did.

MOTION **Senator Bock** moved, seconded by **Chairman Darrington**, to approve **11-1101-1102** with the exception of sections .091 and .092. The motion carried by **voice vote**.

11-1101-1103 Rules of the Idaho Peace Officer Standards & Training Council. Mr. Flink explained the existing rule in reference to felony conviction allows the POST Council to grant a waiver if the crime has, by statute, been reduced to a misdemeanor or decriminalized. This exceeds statutory authority.

MOTION Senator Mortimer moved, seconded by **Senator Lodge**, to approve **11-1101-1103**. The motion carried by **voice vote**.

11-1102-1101 Rules of the Idaho Peace Officer Standards & Training Council for Juvenile Detention Officers. Mr. Flink explained this rule allows a POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities to qualify for Juvenile Detention certification without having to meet the minimum hearing and vision standards again.

MOTION Senator Malloy moved, seconded by **Senator Nuxoll**, to approve **11-1102-1101**. The motion carried by **voice vote**.

11-1106-1101 Rules of the Idaho Peace Officer Standards & Training Council for Misdemeanor Probation Officers. Mr. Flink explained that there are five counties that contract for misdemeanor probation officer services. This rule change allows POST to certify Misdemeanor Probation Officers employed by a private contractor.

MOTION Senator Lodge moved, seconded by **Senator Mortimer**, to approve **11-1106-1101**. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:30 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 06, 2012

SUBJECT	DESCRIPTION	PRESENTER
RS21014C1	Relating to Execution; not to be construed as the practice of medicine	Brent Reinke
S 1215	Relating to Escape or Rescue of Prisoners	Brent Reinke, Director Idaho Dept. of Correction
S 1265	Relating to Execution; relating to the return of a death warrant	Brent Reinke
S 1266	Relating to Execution; relating to a stay of execution	Brent Reinke
Gubernatorial Appointment	Sara B. Thomas of Meridian, Idaho was appointed to the State Appellate Public Defender to serve a term commencing January 12, 2012 and expiring August 1, 2014.	
Presentation	Idaho Criminal Justice Commission (Overview and Update)	Brent Reinke

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen Malloy(McKague)

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 06, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:33 p.m. and asked the secretary to call the roll.

RS 21014C1 **Relating to Execution. Brent Reinke**, Director of Idaho Department of Correction (IDOC), introduced Mark Kubinski, Lead Deputy Attorney General of the Idaho Department of Correction. Mark Kubinski explained that this RS was reformatted from the previous RS due to the concerns of the committee members. It is basically the same as RS 21014, but clarifies some of the confusion and by making the language more direct. It proposes to create a new section, 19-2716A and to leave 19-2716 in tact. Subsection (1) clarifies that carrying out an execution is not the practice of medicine and the director and individuals acting under his authority are exempt from any legal requirements regarding the practice of medicine. Subsection (2) of the statute allows for any entity that is authorized to possess controlled substances to be able to distribute those to the director and department for purposes of carrying out an execution. Subsection (3) authorizes the director to obtain, possess and store controlled substances for purposes of carrying out an execution. This section also clarifies that employees participating in an execution are entitled to immunity from liability or wrongful death. Lastly, he said there was an emergency provision attached to this section.

Senator Davis asked why the emergency provision was retroactive to January 1, 2012. **Mr. Kubinski** said it was probably unnecessary, but was a holdover from the previous RS.

MOTION **Senator Mortimer** moved, seconded by **Senator Nuxoll** to print **RS 21014C1**. The motion carried by **voice vote**.

S 1265 **Relating to Execution. Brent Reinke** introduced Lamont Anderson, Deputy Attorney General of the Criminal Law Division, to present the bill. **Mr. Anderson** explained the purpose of the proposed legislation was to clarify that upon execution, the death warrant is to be returned to the district court, making this part of the procedure consistent with Idaho Code § 19-2715.

Leo Morales, Public Education and Communications Coordinator for the American Civil Liberties Union of Idaho, stated that they were in support of both S1265 and S1266 legislation.

MOTION **Senator Nuxoll** moved, seconded by **Senator Malloy**, to send **S 1265** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

- S 1266** **Relating to Execution.** **Mr. Anderson** explained this legislation clarifies the process of obtaining a death warrant, including specifying a time during which the warrant must be obtained, and sets forth a process for obtaining successive warrants if necessary. It also clarifies responsibilities if an execution does not proceed.
- MOTION** **Senator Davis** moved, seconded by **Senator Lodge**, to send **S 1266** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**, with **Senator Bock** and **Senator LeFavour** voting no.
- S 1215** **Relating to Escape or Rescue of Prisoners.** **Brent Reinke** introduced **Tim Higgins**, Deputy Warden, who has a background of investigation and a great knowledge of contraband and the challenges it causes IDOC behind the fence. **Mr. Higgins** explained this legislation seeks to make it harder for inmates to continue their criminal behavior while incarcerated. Cell phones are becoming the most sought after contraband inside the prisons today. Prisoners smuggle cell phones to participate in drug trafficking, targeting hits on civilians in Idaho communities. He gave an example of a recently confiscated cell phone from a gang member inside one of their facilities; it was used 33,000 times in a period of six months which included 11,000 telephone calls, 22,000 text message all of which bypassed the security system as he continued to conduct gang business while incarcerated. The proposed bill makes it a felony to possess, introduce cell phones, or any other telecommunication into their prison system. Lastly, he stated that the proposed Section 18-2510, Idaho Code, would enhance safety and security in correctional facilities statewide.
- Senator Davis** noted that the effective date of the bill appeared to be July 1st instead of at the signature of the Governor and he wondered if that was correct. With the problem as significant as it was, **Senator Davis** thought they would rather have it effective sooner than later. **Director Reinke** said they were not thinking of having an emergency clause in the legislation, but perhaps they should pursue that. **Senator Davis** asked if the Director would find it valuable to be effective with the Governor's signature. **Director Reinke** replied that he would.
- Senator Vick** asked how long ago was tobacco banned. **Mr. Higgins** replied it was about ten years. **Senator Vick** said that he had information from someone that having tobacco as contraband was a positive thing compared to marijuana or some other illegal drug. **Mr. Higgins** said more tobacco was smuggled in than marijuana. One advantage they saw was that cigarette smoke would mask the smell of marijuana, but now if they smell cigarette smoke they know it is inappropriate and can target that very quickly. He said they were trying to stop the major flow of tobacco products from coming in. He stated that it would be a felony for the person introducing the contraband or for the one in possession.
- MOTION** **Senator Davis** moved, seconded by **Senator Lodge**, to send **S 1215** to the **14th Order for Amendment** to add the emergency clause. The motion carried by **voice vote**.
- APPOINTMENT** **Gubernatorial Appointment.** **Sara B. Thomas** of Meridian, Idaho was appointed to the State Appellate Public Defender (SAPD) to serve a term commencing January 12, 2012 and expiring August 1, 2014. Ms. Thomas has been working for the State Appellate Public Defender since 1999. In 2002, she became Chief of the Appellate Unit where she was second in command. She participated in various committees including the Idaho Supreme Court's Appellate Rules Committee and the Criminal Rules Committee. She also participated in the Idaho Criminal Justice Commission's Sex Offender Registration Subcommittee. She stated that the way she sees the position is to represent people in their appeals to the Idaho Supreme Court and considers the position to, literally, be one of law enforcement. Ms. Thomas said the Constitution has procedural statutes that protects people's rights.

Senator Darrington asked Ms. Thomas if she saw her role as getting a person off or protecting their rights. **Ms. Thomas** said the role of SAPD was protecting someone's rights. She added that the job of SAPD was to make sure that the Court or prosecutor did their job properly. **Chairman Darrington** said at the time SAPD was created it was to help the counties financially and also to give uniform defense counsel throughout the state on appeals. **Ms. Thomas** stated that those goals had been met. After a few questions from the committee to Ms. Thomas, **Chairman Darrington** said the committee would act on the confirmation at the top of the order on Wednesday's meeting.

PRESENTATION **Idaho Criminal Justice Commission Overview and Update.** **Brent Reinke**, Director of Idaho Department of Correction, explained that the Commission was established in 2005 with 25 members and three major branches of government, county, city and citizen representatives. They meet ten times a year and it truly is an opportunity to break the process down from an educational standpoint and they have had great success in developing relationships with all three branches of government and with citizen representatives as well. He stated that there were several subcommittees within the Commission and their focus this year has been: the (1) Research Alliance chaired by Gary Raney, (2) Children of Incarcerated Parents, sponsored by the Department of Health & Welfare, Ross Edmunds, from the Division of Behavioral Health, (3) Public Defense, headed by Dan Chadwick, (4) Misdemeanor Probation Project, chaired by Gary Hahn, (5) Gang Strategies headed by Jim Tibbs, (6) Sex Offender Management Board, chaired by Shane Evans, and the Grant Review Council which is an entirely new function of the Commission. Slide presentation is attached.

Chief Jim Tibbs, said they would continue to look at the Gang Enforcement Act, which was created last session, to make sure that it provides the necessary safety and that it was constitutional. He felt it would be a tool box for communities to use, not just enforcement.

**MINUTES
MOTION**

Senator Bock moved, seconded by **Senator Davis**, to approve the minutes of **January 30, 2012** as written. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:33 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 08, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - February 1	Senator Lodge
Committee Vote	Recommendation to confirm the appointment of Sara B. Thomas to the State Appellate Public Defender to serve a term commencing January 12, 2012 and expiring August 1, 2014.	
RS20874	Relating to Child Custody and Visitation involving Deployed Parents	Mark San Souci
RS21058	Relating to Military Education Training and Service	Mark San Souci
S 1263	Relating to the State Victim Notification Fund	Mike Kane
S 1272	Relating to Telegraphs	Michael Henderson, Legal Counsel for the Idaho Supreme Court
S 1214	Relating to the Board of Commissioners of the Idaho State Bar	Michael Henderson
	Brief on the Sexual Offender Management Board	Alicia Lardieri

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen Malloy(McKague)

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 08, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order and asked the secretary to call the roll.

CONFIRMATION **Chairman Darrington** stated the committee would vote on the recommendation to confirm the appointment of **Sara B. Thomas** to State Appellate Public Defender to serve a term commencing January 12, 2012 and expiring August 1, 2014.

MOTION **Senator Bock** moved to send the gubernatorial appointment of **Sara B. Thomas** as State Appellate Public Defender to the floor with the recommendation that it be confirmed by the Senate. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

MOTION **Senator Lodge** moved, seconded by **Senator Malloy**, to approve the minutes of **February 1, 2012** as written. The motion carried by **voice vote**.

RS 20874 **Relating to Child Custody and Visitation involving Deployed Parents.** **Chairman Darrington** explained that RS 20874 fulfills a request by the Department of Defense that states adopt legislation to consider the unique aspects of military service when balancing equities between parent and child in custody and visitation cases involving service members who must be separated from their families for an extended period of time during mobilizations, temporary duty or deployment.

MOTION **Senator Lodge** moved, seconded by **Senator Mortimer**, to send **RS 20874** to print. The motion carried by **voice vote**.

RS 21058 **Relating to Military Education Training and Service.** **Chairman Darrington** also addressed RS 21058 concerning separating service members who leave the military with documented training and experience that can prepare them for civilian employment. Chairman Darrington explained that training and experience received during military service is not always used by state entities to qualify former service members for licenses required for their occupation or to provide them academic credit. He explained that RS 21058 would provide a method for states to accept that experience.

MOTION **Senator LeFavour** moved, seconded by **Senator Lodge**, to send **RS 21058** to print. The motion carried by **voice vote**.

Relating to the State Victim Notification Fund. **Mike Kane**, representing the Idaho Sheriffs Association, reviewed the origin and history in Idaho for the Victim Notification system, listed many organizations using the system in Idaho referred to as VINE as well as the number of registrations of victims using the system. Mr. Kane explained constitutional requirements to notify victims of a change in an offender's incarceration. Mr. Kane summarized how the VINE system works within the Department of Corrections. He noted that VINE was originally funded in Idaho through a grant which lasted three years. He noted the grant's impending expiration which facilitates the need for a funding mechanism. He projected that if funding was not made available, the system to contact victims would revert back to pencil, paper and phone calls. Mr. Kane further explained that S 1263 proposes a \$10.00 victim fee to use the VINE program. He indicated that the fee would be used for administrating the VINE program which he enumerated indicating any excess fees would be returned to the victim restitution fund.

Senator Malloy questioned if a victim did not have funds to pay the fee and if the proposed fees were insufficient to fund VINE how would it be remedied. **Mr. Kane** answered that a provision would be made to accommodate victims unable to pay and if funds were deemed insufficient the Sheriff's Association would have to do without until an additional fund increase request could be made. Mr. Kane further indicated that the fee amount had been extensively studied within the court system to verify the amount of \$10.00 would be sufficient.

Vaughn Killeen, former Ada County Sheriff, currently Executive Director of the Sheriff's Association, spoke in favor of the VINE program recounting the origins of Vine in Idaho and benefits to victims.

Senator Lodge asked if anyone, not only a victim, could track an offender within the system. **Sheriff Killeen** answered in the affirmative indicating any interested party could track an offender. **Senator Davis** explained his personal involvement using the VINE system and security felt as a result.

Olivia Craven, Executive Director for the Commissions of Pardon and Parole Board, explained the invaluable assistance the VINE system provides to notify victims of escapes, hearings as well as apprise them of changes in offender status. The Parole Board uses VINE quite frequently to assist in their work and noted that without the VINE system, she would need additional staff. She discussed the positive and easy interface of VINE with her office as well as ease of use by victims.

Bernice Hitchman, a citizen, spoke in favor of the VINE system. Ms. Hitchman explained that she was a victim and appreciated having the VINE system in place to help her feel prepared and safe.

Laurie Nolan, a victim coordinator with the Ada County Prosecutors office, explained her support of VINE and told of her experiences over the last 25 years of the growth of victim's rights. Ms. Nolan related a story about a domestic violence victim whose life had been threatened if she reported the abuse. When she finally came forward the VINE system afforded her the chance to focus on her recovery and be in a safe place if the offender was released. For the past 10 years this victim has relied on VINE.

Senator Malloy wondered if S 1255 relating to exemption from disclosure would be an obstruction to the VINE program. **Mr. Kane** assured the committee it would not.

Kimberly Ivacek, a victim and currently executive director of a family violence organization in Caldwell, recounted her exposure to VINE and her knowledge of where her ex-husband had been kept and whether he was going to be moved. She explained that because of notification of a release hearing, she was able to testify and was instrumental in maintaining his incarceration. Relating to her work, she explained the fear victims feel and emphasized that VINE notifications allow victims to be in a safe position at all times.

Joel Tueber of the Fraternal Order of Police and representative of the Boise Police Department spoke concerning the benefits of VINE to the police officers of release of an offender. This allows the police an opportunity to protect victims. As police officers work in the street they need to know the whereabouts of the offenders they have arrested so they can monitor those offenders.

Louis Marshall, Prosecuting Attorney for Bonner County and IPAA president spoke concerning Bonner County's experience with victim/offender notification. He voiced his support of the bill.

Colonel Jerry Russell, Idaho State Police, voiced support of the VINE program and S 1263.

Mike Kane noted other organizations use VINE, namely the Social Security Department and Health and Welfare. **Vice Chairman Vick** asked for the total cost of the program. **Mr. Kane** replied the projected cost is about \$400,000.

MOTION

Senator Malloy moved, seconded by **Senator Lodge** to send **S 1263** to the floor with a **do pass** recommendation. **Vice Chairman Vick** made comments concerning the importance of the program and noted that S 1263 is not about the merits of the program, but that since victim notification is constitutionally mandated, he said he thought the funding should come from the General Fund rather than an increased fee. He reiterated that no one spoke in opposition to the fee issue. The motion carried by **voice vote** with **Vice Chairman Vick** dissenting.

S 1272

Relating To Telegraphs. Michael Henderson, Legal Counsel for the Idaho Supreme Court, explained that S 1272 would amend telegraph use specified in Idaho Code. The outdated sections of Idaho Code which concern legal service of arrest warrants and railway notifications were enumerated.

MOTION

Senator Nuxoll moved, seconded by **Vice Chairman Vick** to send **S 1272** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1214

Relating To The Board Of Commissioners Of The Idaho State Bar. Michael Henderson explained this legislation which concerns Section 3-409 of the Idaho Code, concerning license fees for attorneys in the state of Idaho. S 1214 reflects rule changes adopted by the Idaho State Bar Association and was approved by the Supreme Court concerning membership categories within the Idaho Bar Association.

Diane Minnich of the Idaho State Bar explained fee changes associated with lawyers over 70 years of age and whether they are practicing or inactive and wishing to maintain membership.

MOTION

Senator LeFavour moved, seconded by **Senator Malloy**, to send **S 1214** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

BRIEF

Alicia Lardieri, intern for the Chairman and Committee, presented a brief summary of the Sex Offender Management Board prior to appointments anticipated in a subsequent meeting. Ms. Lardieri recounted the history of the Board and current plans to revamp the Board to conform to national standards. The organizations represented by members on the Board were listed. The functions and responsibilities of the Sex Offender Management Board were detailed.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:30 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, February 10, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - February 6, 2012	
RS21179	Relating to Motor Vehicle Financial Responsibility	Mike Kane
Gubernatorial Appointments Hearing only	<p>Dolly Oiuta Bedal of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 16, 2011 and expiring January 1, 2014.</p> <p>Jeffrey A. Betts of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2016.</p> <p>Jon Michael Burnham of Sugar City, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2015.</p> <p>Shane Lee Evans of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2015.</p> <p>Jean M. Fisher of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2015.</p> <p>Paula K. Garay of Meridian, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2014.</p>	

Charles "Chad" A. Huff of Fruitland, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2016.

Michael David Johnston of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2016.

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen Malloy(McKague)

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, February 10, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, and Bock

ABSENT/ EXCUSED: Senator LeFavour

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:30 p.m. and asked the secretary to call the roll.

RS 21179 **Relating to Motor Vehicle Financial Responsibility. Mike Kane**, representing the Property and Casualty Insurance Association of America, said the purpose of this bill is to allow an individual to produce proof of automobile insurance by electronic means in appropriate situations in lieu of printed means.

MOTION **Senator Lodge** moved, seconded by **Senator Malloy**, to print **RS 21179**. The motion carried by **voice vote**.

The eight Gubernatorial Appointments to the newly formed Sexual Offender Management Board are here to introduce themselves to the Committee.

APPOINTMENT **Dolly Oiuta Bedal** of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 16, 2011 and expiring January 1, 2014. **Ms. Bedal**, a native Idahoan, said she had served as guardian ad litem for the state of Idaho, was a small business owner for five years, and had served both the public and private sector clientele, being court ordered and self referred. She has worked with both the victim and the sexual predator.

INQUIRY **Senator Nuxoll** asked Ms. Bedal for her insights on why the work she has done would be beneficial. **Ms. Bedal** replied that she brought a different perspective of victim and offender. She has seen that treatment has been helpful to reduce recidivism. **Chairman Darrington** stated that according to the material they were given, each member of the Board comes from different disciplines and represents a different point of view. **Ms. Bedal** replied that she was the public member. **Senator Lodge** asked for an explanation of the red feathers, white bison, 12 step program. **Ms. Bedal** said that was an American native custom of going through the 12 steps as a healing for those women that have been a victim of sexual abuse. **Senator Malloy** asked if she believed sex offenders could be rehabilitated. **Ms. Bedal** replied that she believed a large percentage could be rehabilitated.

APPOINTMENT **Jeffrey A Betts** of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2016. **Mr. Betts** explained that he represents the juvenile treatment and assessment on the Board. He has provided outpatient treatment for the past twenty years for adolescents who have committed sexual offenses, and has been a clinical member of the Association for Treatment of Sexual Abusers (ATSA). He has also been involved in an organization called the Round Table that provides an opportunity to work with juveniles that have committed sexual offenses and have discussions on treatment and comprehensive management for those individuals.

INQUIRY	Senator Malloy asked if Mr. Betts found it necessary to prescribe medications to help control the angers that developed. Mr. Betts replied that he was not able to prescribe medications; it must only be a referral for him.
APPOINTMENT	Jon Michael Burnham of Sugar City, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2015. Mr. Burnham said he represents the Department of Juvenile Correction and has worked for the department for 18 years. He has spent the last six years working at St. Anthony's facility providing inpatient residential treatment to juveniles who have been adjudicated for sexual crimes as well as assessments and reassessments for those juveniles. He said he was also a member of ATSA and was a clinical social worker.
INQUIRY	Senator Nuxoll asked what was the best thing he has learned since working with the juveniles. Mr. Burnham said that making good assessments was the key.
APPOINTMENT	Shane Lee Evans of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2015. Mr. Evans said he was currently the Director of Education, Treatment & Reentry for the Department of Correction. In the past, he worked with juvenile and adult sexual offenders as a parole officer. He has also worked in programs in developing sex offender management strategies. He has an advanced degree in Criminology and currently chairs this Board.
INQUIRY	Senator Malloy asked how often does he see offenders come back into the system. Mr. Evans said the percentage is pretty low, but the sexual offender may reenter with other criminal activity. He expressed how they need to treat the whole person.
APPOINTMENT	Jean M. Fisher of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2015. Ms. Fisher said she is a Deputy Prosecuting Attorney and has been with Ada County for 22 years and was actively involved in the prosecution of sex offenders. She said she was a strong proponent of a tiered system, and her goal was to help develop this system within the Board.
INQUIRY	Senator Bock asked Ms. Fisher to explain in general terms the difference between the sexual offender and the sexual predator. Ms. Fisher said a sexual predator is someone that lures young children or baits their victim where a sexual offender may be involved with someone that is age inappropriate and with that being said, it is complicated, which is why she advocates the tiered system to evaluate each individual. Senator Mortimer asked if she thought we had a better understanding of how and why to help sex offenders. Ms. Fisher said again she thought we had come a long way with the psychological tools that we have and the ability to assess why someone is doing what they are doing.
APPOINTMENT	Paula K. Garay of Meridian, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2014. Ms. Garay explained that she was the Executive Director at Sequel, a residential treatment program for juveniles who sexually offend. She is also a clinical member of ASTA and her position is to insure that the Board takes into consideration cultural diversity and the individual's parentage and ethnicity.

INQUIRY

Chairman Darrington stated that Sequel was a sex offender facility contracted to the Department of Juvenile Corrections. **Senator Malloy** asked Ms. Garay if she believed there was different diagnostic techniques that would be used based specifically on their culture or heritage, or if one should just be sensitive to those things. **Ms. Garay** said there were certain things that need to be considered when going through the assessment process and that the assessment and evaluation tools are applicable to the individual that you are assessing. She said that in treatment, one of the standards is that you fully engage whether it's an individual or group. She said one perspective regarding the Asian culture is that you only speak after you're spoken to and also direct eye contact is considered disrespectful. That is one of the cultural differences to consider.

APPOINTMENT

Charles "Chad" A. Huff of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2016. **Mr. Huff** explained that he was currently the sheriff of Payette County and he had been in law enforcement for 19 years, 6 of those with the Idaho State Police and 6 with the Payette County Sheriff's office. He said his position on this Board is to represent the Idaho sheriffs and to make sure we are not mandating more work for the sheriffs.

INQUIRY

Vice Chairman Vick asked Sheriff Huff what things would burden the sheriffs department. **Sheriff Huff** said they were limited in staff and deputies that would be assigned to go and make sure that these offenders are following through with registration and are where they say they are. **Senator Bock** asked how the tiered system would help the sheriffs. **Sheriff Huff** said he thought it would give the offenders a chance to reduce their registration time or actually remove them.

APPOINTMENT

Michael David Johnston of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing August 3, 2011 and expiring January 1, 2016. **Dr. Johnston** stated that he was a licensed psychologist and began working with Corrections in the mid 90's and since has performed evaluations on sex offenders that were on parole or incarcerated since 1997. He said he was also involved in the development of the sexual offender treatment program. He is currently the elected Vice Chairman of the Board.

INQUIRY

Senator Mortimer asked if they were getting a better understanding of sexual offenders and how to treat them. **Dr. Johnston** said he believed they were. They were actively in the field to pursue research to identify what contributes to sexual offending and what to treat. He continued with their history and what parts of their personality and behavior to target in treatment and are developing ways to adjust that. **Senator Mortimer** added that he had heard that it is actually physical. He asked if there was science being done regarding the physiological changes. **Dr. Johnston** said there was research out there that there is different brain activity and brain chemistry for some sex offenders; sometimes it's purely behavioral. **Senator Malloy** asked if there were medications that were useful or beneficial to these offenders. **Dr. Johnston** said there were anxiety, depression medications, and even hormones, but he was not able to give a percentage of usage or of success.

UPDATE

Shane Evans gave a brief update of their activities since September when the Board convened for the first time. They have developed and proposed a tiered system based on risk factors that research tells are the best indicators of potential or further risk. He said they have created by-laws and had the first final draft of the standards for the Sex Offender Report. They have also convened a sub committee concurrently looking at the development and proposal for a tiered registration system that will incorporate all the research and supports Idaho's vision of protecting and serving these offenders in the future.

COMMENTS

Chairman Darrington recalled that the Adam Walsh Act required states to establish a tier according to the crimes and they would vary from state to state. He asked Mr. Evans how he envisioned that taking place. **Mr. Evans** said they would take the elements of the crime as presented in SORNA and trying to equate how Idaho statutorily addresses those laws as the first step. **Senator Mortimer** asked if there was one member of the Board that was not filled. **Mr. Evans** said they had not found a permanent member from the Public Defender's office as well as the non voting member for the Judiciary. Scott Ronan is serving that role today.

Chairman Darrington said the Committee would act on all the appointments at the top of the agenda on Monday and would now recognize Vice Chairman Vick regarding the minutes of February 6, 2012.

MOTION

Vice Chairman Vick moved, seconded by **Senator Mortimer**, to approve the minutes of **February 6, 2012** as written. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:15 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 13, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Approve minutes of February 8, 2012	Senator Mortimer
COMMITTEE VOTE	<p>GUBERNATORIAL APPOINTMENTS Recommendation to confirm:</p> <p>Dolly Oiuta Bedal to the Sexual Offender Management Board to serve from August 6, 2011 to January 1, 2014</p> <p>Jeffrey A. Betts to the Sexual Offender Mangement Board to serve from August 3, 2011 to January 1, 2016</p> <p>Jon Michael Burnham to the Sexual Offender Mangement Board to serve from August 3, 2011 to January 1, 2015</p> <p>Shane Lee Evans to the Sexual Offender Mangement Board to serve from August 3, 2011 to January 1, 2015</p> <p>Jean M. Fisher to the Sexual Offender Mangement Board to serve from August 3, 2011 to January 1, 2015</p> <p>Paula K. Garay to the Sexual Offender Mangement Board to serve from August 3, 2011 to January 1, 2014</p> <p>Charles "Chad" A. Huff to the Sexual Offender Mangement Board to serve from August 3, 2011 to January 1, 2016</p> <p>Michael David Johnston to the Sexual Offender Mangement Board to serve from August 3, 2011 to January 1, 2016</p>	
RS21175	Relating to Attorney's Fees in Civil Actions	Senator Tim Corder
RS21162	Relating to the Idaho Bail Act	David E. Kerrick

[S 1292](#)

Relating to Execution

Brent Reinke, Director
Idaho Dept of
Correction

[H 402](#)

Relating to the State Brand Board

Larry Hayhurst,
Brand Inspector

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen Malloy(McKague)

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 13, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:35 p.m. and recognized Senator Mortimer for a motion of the minutes of February 8, 2012.

MOTION **Senator Mortimer** moved, seconded by **Vice Chairman Vick**, to approve the minutes of **February 8, 2012** as written. The motion carried by **voice vote**.

Chairman Darrington proposed that the eight members of the Sexual Offender Management Board (SOMB) could be confirmed in one motion unless someone wanted to select ones to be handled independently.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll**, to send the gubernatorial appointment of all eight members, **Dolly Ouita Bedal, Jeffrey A. Betts, Jon Michael Burnham, Shane Lee Evans, Jean M. Fisher, Paula K. Garay, Charles "Chad" A. Huff, Michael David Johnston** to the Sexual Offender Management Board to the floor with the recommendation that they **be confirmed** by the Senate. The motion carried by **voice vote**.

RS 21175 **Relating to Attorney's Fees in Civil Actions.** **Senator Corder** explained this legislation provides a very conservative inflation based adjustment to Section 12-120 (1), Idaho Code. He said this section grants attorneys fees to the prevailing party of a civil action and has not been adjusted since the current \$25,000 was adopted in 1986. This amendment would provide that there shall be taxed and allowed to the prevailing party a reasonable amount fixed by the court as attorneys fees in certain actions where the amount pleaded is \$35,000 or less.

MOTION **Senator Davis** moved, seconded by **Senator LeFavour**, to print **RS 21175**. **Senator Bock** said he thought it was confusing the way it was written. He suggested a more detailed explanation of how this affects specific litigations when it came back to committee. **Senator Mortimer** agreed, saying he was not sure he understood how changing this number would make legal proceedings more available for the normal public. The motion carried by **voice vote**.

RS 21162

Relating to the Idaho Bail Act. **David E. Kerrick**, representing Professional Bail Agents of Idaho, explained this legislation would require bail agents to collect all of the premium on the surety bail bonds they write at the time the defendant is released from custody. He said this premium is usually ten percent of the face amount of the bond, plus a \$35 agent's fee and a sheriff's fee. It does not prohibit third party financing of the premium. He stated that the effect of this change will be to:

- improve public safety by requiring an investment from the defendant and/or cosigners concurrent with release from custody;
- provide uniformity so the court and law enforcement will know when bail is set what will be required of the defendant seeking release;
- restore the traditional practice of providing bail services.

Senator Malloy asked if the person seeking bail can borrow any money from anybody except the bail bond agent. **Mr. Kerrick** said that was correct. **Senator Mortimer** asked what difference would it make to the court where the money comes from and isn't it the states best interest to keep people out of the jail. **Mr. Kerrick** cited a case from last year of Robert Hall who was accused of murdering a lawyer from Meridian who was having an affair with his wife. The judge set bail at a million dollars and yet after some shopping around, this defendant found a bail agent that would let him out on very lenient terms.

MOTION

Senator Davis moved, seconded by **Senator LeFavour**, to print **RS 21162**. **Senator Bock** would like to have them demonstrate what difference it makes economically and if the risk is the same if they fund the bail or if there is security. **Senator Malloy** said he did not see the distinction and thought it was encroaching on business enterprise. **Senator LeFavour** commented that she understood that having a family member help with the bail money would actually help keep the person from fleeing. The motion carried by **voice vote**.

S 1292

Relating to Execution. **Brent Reinke**, Director of Idaho Department of Correction, explained this bill is to exempt executions from regulations governing controlled substances and the practice of medicine and pharmacy, to clarify that employees participating in executions are entitled to the protections of the Idaho Tort Claims Act, and to provide that persons participating in executions under this section are not subject to civil or criminal liability for the death of the condemned person. The new language in subsections (2) and (3) is drawn largely from a previous version of the same statute.

Vice Chairman Vick asked how this differed from the previous version. **Director Reinke** said they had made a new section and reorganized it to make it easier to follow. **Senator Davis** said that Idaho Code, Section 19-2716 dealt with the infliction of the death penalty and talked in terms of the procedure and processes of the execution. He further stated that the new section deals with the practice of medicine, the possession of controlled substances, and the liability.

MOTION

Senator Davis moved, seconded by **Senator Mortimer**, to send **S 1292** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 402

Relating to the State Brand Board. **Larry Hayhurst**, Brand Inspector for ISP, explained this would be a "housekeeping" piece of legislation. This legislation puts the Director of the Idaho State Police in an administrative position. The Director would have a handle on training and compliance standards within the Idaho State Police. He said it does not remove power from the function of the Idaho Brand Board in regard to the regulatory protection of the Idaho livestock industry.

Chairman Darrington asked how many sworn officers were in the Brand service. Mr. Hayhurst said they had 30 fully commissioned officers. **Chairman Darrington** asked if these officers, who had been through the POST academy and were involved in a livestock theft investigation, had the same powers of other law enforcement officers. **Mr. Hayhurst** said that was correct, and they couldn't turn their head if they saw a drunk driver since it was a public safety issue. **Chairman Darrington** said it seemed to him that the legislation simply clarified the chain of command right up to the Director of ISP.

MOTION

Senator Davis moved, seconded by **Senator Lodge** to send **H 402** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:15 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 15, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - Monday, February 13, 2012	
<u>RS21237</u>	Relating to Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances	Senator Keough Senator Mortimer
<u>HJM 4</u>	A Joint Memorial to the Senate and House of Representatives of the United States in Congress Assembled, and to the Congressional Delegation Representing the State of Idaho in the Congress of the United States.	Representative Grant Burgoyne
APPOINTMENT	The Board of Commissioners of the Idaho State Bar's Appointment of Joel P. Hazel of Coeur D'Alene to replace Anne Solomon as a member of the Idaho Judicial Council. He will serve a six-year term commencing on July 1, 2011 and expiring on June 30, 2017.	
GUBERNATORIAL APPOINTMENT	Susan M. Kiebert was appointed to the Judicial Council to serve a term commencing October 4, 2011 and expiring July 1, 2017	
Presentation	Idaho Judicial Council Update	Jim Carlson

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen Malloy(McKague)

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 15, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:35 p.m. and he recognized Senator Malloy for a motion to approve the minutes.

MOTION **Senator Malloy** moved, seconded by **Senator Nuxoll**, to approve the minutes of **February 10, 2012** as written. The motion carried by **voice vote**.

RS 21237 **Relating to Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances.** **Senator Keough** explained this legislation adds additional language to Idaho Code, Section 12-117 to make clear certain situations. It also amends Idaho Code, Section 12-117 to cover health districts (which are not technically regarded as state agencies), to provide that the prevailing party in lawsuits between governmental entities is entitled to recover attorney fees and costs as a disincentive to such suits, and to make technical corrections.

MOTION **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 21237**. The motion carried by **voice vote**.

HJM 4 **A Joint Memorial** to the Senate and House of Representatives of the United States in Congress Assembled, and to the Congressional Delegation Representing the State of Idaho in the Congress of the United States. **Representative Grant Burgoyne** explained this memorial urges the United States Congress to create a third federal district judgeship for the State of Idaho. Representative Burgoyne proceeded to give some background of why this judgeship was necessary. He said the first federal district judge was in 1890 when Idaho became a state. By 1954, Congress thought Idaho's growth, with a population of 500 or 600 thousand people, was sufficient for a second federal district judge. The population now has reached 1.5 million people and there is great need for a third federal district judge. Representative Burgoyne said these federal district judges are constitutional judges, appointed by the President and confirmed by the Senate. He said they could hear any federal case. The magistrate judges employed by the federal court and not being constitutional judges, can only do civil cases not criminal cases. He stated that because the state was large geographically, judges must travel to four locations. The caseload has increased dramatically over the years. In 1954, there were 170 pending criminal cases in Idaho; there were 942 cases as of September 2011. Currently, judges must come from out of state to try these cases. So a third federal district judge is not an Idahoan, is unknown, maybe from a district in California, or possibly a retired federal judge from Spokane, Washington.

Representative Burgoyne continued by reminding the committee that in 2002, Senate Joint Memorial 110 was adopted by the Second Regular Session of the 56th Idaho Legislature urging the Congress of the United States to authorize an additional United States District Court Judge and the staff necessary to assist handling the increasing caseload, but to date, Congress has failed to act. The federal government has an obligation to appoint a 3rd federal district judge for Idaho. A properly resourced and properly functioning judiciary is a fundamental and core governmental function essential for the preservation of the people's rights and their freedom. There was some concern expressed in the House about which President was going to appoint a new federal district judge. He doesn't see any difference between the current federal district judges on the basis of who appointed them. They both judge fairly, neutrally, and impartially. He said whatever is done in Washington, DC today for a federal district judge, is going to take time and it is not known who will be President of the United States or who will be in the Senate and how that appointment confirmation process will come down by then.

Vice Chairman Vick asked why there was opposition in the House.

Representative Burgoyne said that Representative Batemen was concerned about having the current President make the appointment for Idaho.

Representative Batemen also said he thought there was too much federal government in Idaho already. **Senator Malloy** queried if the President could actually appoint someone in another state who would have to relocate to Idaho.

Representative Burgoyne said he didn't know, but typically there could be a number of names given to the President to pick from.

John Runft, a member of the Idaho State Bar, said he thinks this goes far beyond political parties, and there is an absolute desperate need. Many of nearby states with less population than Idaho have three federal district judges. The comparison is exacerbated further by the fact that Idaho is bigger than most of these other states and the judges have to travel great distances to get to court. In addition to that, the criminal calendar is especially troublesome because in federal criminal cases only federal district judges can adjudicate which means the federal bench is tied up. Those who are practicing civil law have a difficult time getting into court. In many cases, the appointment of a magistrate is elective. Lastly, he stated the need is overwhelming, and the federal district bench deserves attention.

MOTION

Senator Davis moved, seconded by **Senator Bock**, to send HJM 4 to the floor with a **do pass** recommendation. **Senator Davis** said there were two types of judges, Article I (magistrate judges) and Article III judges who are lifetime appointments. He mentioned a decision from the Supreme Court that severely limited bankruptcy cases. He added that there were many bankruptcy cases in Idaho and because they must be heard by an Article III judge the effect was to add burden to judges. **Senator Bock** commented about the fear of political sway and he thought that issue could be put to rest. **Senator Lodge** declared a conflict, but will vote. The motion carried by **voice vote**.

APPOINTMENT

The **Idaho State Bar's Appointment** of **Joel P. Hazel** of Coeur D'Alene to replace Anne Solomon as a member of the Idaho Judicial Council. He will serve a six-year term commencing on July 1, 2011 and expiring on June 30, 2017. Mr. Hazel comes from a long line of lawyers. His great grandfather was licensed to practice law in 1911. Mr. Hazel is currently an attorney in Coeur D'Alene with licenses in Idaho and Washington. He said he has served the Bar in various capacities. He has been involved in Kootenai County specialty courts and was the prosecutor in charge of drug court when it was first created in 1997.

Chairman Darrington asked how he would describe the work of the Council. **Mr. Hazel** replied that he saw the work of the Council to select open judicial seats fairly without prejudice and select the most qualified. **Chairman Darrington** asked him about the disciplinary procedures of the Council. **Mr. Hazel** replied that some complaints have merit and some do not.

GUBERNATORIAL APPOINTMENT

Susan M. Kiebert was appointed to the **Idaho Judicial Council** to serve a term commencing October 4, 2011 and expiring July 1, 2017. Ms. Kiebert said she was not an attorney and had no family members that were. She expected this to be quite a challenge, but was dedicated to the common good and making sure that anyone that comes to court in Idaho is allowed a fair and ethical treatment of their case.

PRESENTATION

Chairman Darrington asked Jim Carlson and Chief Justice Burdick to come forward and he asked Mr. Carlson to introduce other members of the Council who were here with him. Mr. Carlson introduced Mr. Phil Reberger and Honorable Judge Wilper.

Idaho Judicial Council Update. **Jim Carlson**, Executive Director, handed out the attached Idaho Judicial Council Report to the Committee. Mr. Carlson said there was an exhaustive process to select candidates for the Judicial Council in Idaho. They would like to take the interview process into the districts where there are judicial vacancies and allow citizens to attend. That is not possible at this time due to budget constraints so this is a matter for the future. The 2011 judicial nominations that Chairman Darrington mentioned are very high quality candidates. Mr. Carlson said the judicial vacancies had declined, but he expected that to change. He went over the disciplinary activities and complaints that were received. The magistrate judges handle small claims, domestic relations and child custody cases and they get most of the complaints. He stated that a significant number of the complaints come from jail inmates. Evaluation Questionnaires are distributed to attorneys and clerks once a year to evaluate the judges. The judges have been very positive about the Performance Evaluation and the feedback they receive.

Chairman Darrington asked the other members to speak briefly to the Committee. **Chief Justice Burdick** said in light of complaints received, there should be more discussion in communities concerning any sort of government. He understands that people with little or no patience and sometimes little or no education as to the proper form of governmental action, get frustrated. He believes the frustration will just get worse in light of the social media and e-mails. **Judge Wilper** commented that Jim Carlson had taken over the position of Executive Director a year ago and had done an outstanding job. **Phil Reberger**, a public member, said it was a pleasure to be before the Committee and would second the previous comments. He would urge the Committee to vote to confirm the two nominees that are superb additions to the Council and will do a great job representing the public and the Bar. He thinks Idaho excels in public confidence, performance and ethics in the judiciary. **Chairman Darrington** added that Representative Eskridge and Representative Anderson from the House came just before the start of the meeting and asked that their support for Susan Kiebert be in the record.

Senator Malloy asked if there were any actions taken regarding complaints on any judges. **Mr. Carlson** said he couldn't be specific, but there had been a member of the bench that he thought was rude and dismissive to a litigant. It was brought before the committee to address the issue. It had been a long day for the judge, but he was advised to never say anything in anger and to remember sometimes this is the only day a person may be in a courtroom and to make it their day. **Chief Justice Burdick** said that when he was a district judge, there were four magistrate judges who were forced to retire as a result of complaints to the judicial council in one year. That may have been an exceptional situation. He said he was also a part of another proceeding where another magistrate had to retire as a result of actions of the judicial council. He stated that when there are significant complaints, there are significant punishments.

Senator Mortimer asked why all of the judges did not participate in the performance evaluations. **Chief Justice Burdick** replied that he first thought it was a lack of information that the program was available. They utilized Patti Tobias's email to target each one of those judges and have them sign up and tell them how important it is. That doubled the number of judges that signed up in one year. Currently, only a third of the judges are signed up, but he said he intended to push that issue at the judicial conference. **Senator Davis** asked if they had the right statutory makeup for the council. **Chief Justice Burdick** said that based on his experience, he thought there needed to be a mix of legal backgrounds as well as interest backgrounds and that was what they had. He said an intern would be going through the rules that concern the council this summer. **Senator Davis** asked if there was regional balance. **Chief Justice Burdick** said you don't always get to pick according to geographical area.

Chairman Darrington proceeded to graduate Chase Bower from the Page program expressing appreciation for his service. There being no further business, **Chairman Darrington** adjourned the meeting at 2:45 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 20, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Introduction of Page: Alexa Woodland Approve minutes of February 13, 2012	Senator Nuxoll
COMMITTEE VOTE	Recommendation to confirm: Idaho State Bar's Appointment of Joel P. Hazel of Coeur D'Alene to replace Anne Solomon as a member of the Idaho Judicial Council and to serve a six-year term commencing on July 1, 2011 and expiring on June 30, 2017. Gubernatorial appointment of Susan M. Kiebert to the Judicial Council to serve a term commencing October 4, 2011 and expiring July 1, 2017.	
RS21245	Relating to the Sexual Exploitation of a child	Joel Teuber, FOP Tim Brady, Detective
RS21246	Relating to Enticing a Child	Joel Teuber
RS21281	Relating to the Idaho Trade Secrets Act	Jeremy Pisca
RS21148	Relating to the Sexual Offender Registration Act	Senator Bock
RS21301	Relating to Costs of Court Ordered Testing	Seth Grigg, Idaho Association of Counties
S 1300	Relating to Child Custody and Visitation Involving Deployed Parents	Mark San Souci, Defense State Liaison Office

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington	Sen Mortimer
Vice Chairman Vick	Sen Nuxoll
Sen Davis	Sen Bock
Sen Lodge	Sen LeFavour
Sen Malloy(McKague)	

COMMITTEE SECRETARY

Leigh Hinds
Room: WW35
Phone: (208) 332-1317
email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 20, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:35 p.m. and asked the secretary to call the roll. He welcomed Senator McKague on her return to the Committee. He then introduced and welcomed Alexa Woodland, the Committee's Page for the next six weeks.

Chairman Darrington said they would not vote to confirm the appointments as noted on the Agenda, but would address that at Wednesday's meeting.

RS 21245 **Relating to the Sexual Exploitation of a child.** **Joel Teuber**, Fraternal Office of Police, introduced Detective Tim Brady to explain the bill. **Detective Brady** explained that the purpose of this legislation was due to the change in technology. Some of the definitions in code are being updated to incorporate modern technology. This legislation provides updated language that addresses multiple new ways children are being exploited, so that the charged crime(s) more accurately describe the illegal behavior and associated penalties considering the current and potential future technology. The biggest change is commercial purpose. It is geared toward people who are trafficking and distributing child pornography for monetary reasons. That is not necessarily the case anymore; child pornography is distributed mostly to gain more child pornography.

MOTION **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 21245**. The motion carried by **voice vote**.

Chairman Darrington recognized and welcomed Tony Park, former Attorney General, to the Committee.

RS 21246 **Relating to enticing a Child.** **Detective Brady** explained the purpose of this bill is to update Idaho child enticement laws to more closely match technological trends that exist in today's society. The current law does not clearly specify that children can be enticed electronically in many ways other than the Internet. Society and technology have progressed to the point where communication exists in multiple forums through a myriad of devices, which the current law does not adequately address. This legislation will update the law regarding these issues.

MOTION **Senator Nuxoll** moved, seconded by **Senator Lodge**, to print **RS 21246**. The motion carried by **voice vote**.

RS 21281 **Relating to the Idaho Trade Secrets Act.** **Jeremy Pisca**, representing Premier Technologies, Inc., explained this bill would revise the Idaho Trade Secrets Act to allow for recovery when one improperly retains misappropriated trade secrets. The bill explains the damages recoverable when there is a violation of the act and allows an award of reasonable attorney fees to a prevailing party.

- MOTION** **Senator Davis** moved, seconded by **Vice Chairman Vick**, to print **RS 21281**. The motion carried by **voice vote**.
- RS 21148** **Relating to the Sexual Offender Registration Act.** **Senator Bock** explained that S1385, effective July 1, 2010, amended the definition of statutory to include only such acts when the offender is age 18 or older and the victim is under age 16, or the victim is 16 or 17 and the offender is 3 or more years older than the victim. This legislation provides an avenue to petition the Court to be removed from the Sexual Offender Registry if they could not have been charged for statutory rape under current law as amended by S1385.
- Senator Davis** said that on page 3, line 11, it is mandatory that the court "shall" exempt the petitioner and "may" order that any information regarding the petitioner be expunged from the central registry. He asked why the court didn't have discretion in light of the circumstances of each individual case. He thought it was incongruent. **Senator Bock** thought it was okay, but he could see that "may" might be the more appropriate word. He would be happy to change it from "shall" to "may." **Chairman Darrington** suggested that if the Committee agreed, they could order it to be printed under a C1 with that change made and not have to go through the process again.
- MOTION** **Senator Davis** moved, seconded by **Senator LeFavour**, to print **RS 21148** as a C1 after the change suggested of "shall" to "may" on line 11, page 3 is made. The motion carried by **voice vote**.
- RS 21301** **Relating to Costs of Court Ordered Testing.** **Seth Grigg**, Idaho Association of Counties, explained the purpose of this legislation is to clarify that court ordered tests of breath and bodily fluids as a condition of probation are not to be included in the cost of supervision fee authorized in sections 20-225 and 31-3201D, Idaho Code. It clarifies that if court ordered tests, the offender pays; if tests are not court ordered and the supervising agency requests the testing, the agency pays.
- Senator Davis** asked where in the legislation is the last half of that statement. **Mr. Grigg** said it was implied.
- MOTION** **Senator Davis** moved, seconded by **Senator Lodge**, to print **RS 21301**. The motion carried by **voice vote**.
- S 1300** **Relating to Child Custody and Visitation Involving Deployed Parents.** **Mark San Souci**, Regional Liaison for Military Families, Northwest Region, explained that the Department of Defense request that states adopt legislation to consider the unique aspects of military service when balancing equities between parent and child in custody and visitation cases involving service members who must be separated from their families for an extended period of time. The bill requires that no permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service. The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. The bill also allows a parent to present testimony and evidence by electronic means if the deployment prevents the service member from appearing in person at a hearing related to a petition for the modification of child custody. In closing, Mr. San Souci said that 42 states had enacted most all of these provisions for military families.

Senator Davis said that a parent's deployment may be at a period of time where that child is going through a remarkable maturation time period, teen or preteen, and upon the return of the deployed individual to refer back to the original order seems to be a presumption that the deployed person is not disadvantaged. He said he thought Idaho's focus should be what was in the best interest of the child. He suggested to provide for a reset on the best interest and modify Idaho's code section and allow the court to a fresh start as to what's in the best interest of the child at that point in their emotional and social development. **Mr. San Souci** said he thought those particular lines had been discussed last year with legislative staff and this was the latest variation from last year's work. He said he was open to rework based on any suggestions of the Committee.

Senator Davis asked if Idaho's family law section had been vetted by the practitioners. **Mr. San Souci** said he knew that the Supreme Court had approved it. **Chairman Darrington** said he believed it had been vetted by the bill writer in Legislative Services through the Department of Health and Welfare. **Senator Davis** asked if the judges had commented about any concerns. **Chairman Darrington** called Michael Henderson, legal counsel for the Idaho Supreme Court, to the podium. **Mr. Henderson** said they did review it and some judges expressed concern as to how this would interact with Servicemember Civil Review Package of 2003, which places considerable restrictions on what civil proceedings could be changed while a service member is on active service. There was some general concerns about the interaction with this bill and the Servicemembers Civil Relief Act (SCRA). **Senator Davis** addressed a question to Mr. San Souci. He asked what was the standard of the federal statute. **Mr. San Souci** said he was not aware that any of the other states that had considered this legislation had a concern or conflict with the federal statute. He was not able to quote that statute.

MOTION **Senator LeFavour** moved to send **S 1300** to the 14th Order for Amendment. There was no second, and the motion was lost.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll**, to hold **S1300** in Committee subject to the call of the Chair. The motion carried by **voice vote**. **Senator Davis** suggested that someone from the family law section of the State Bar that feels comfortable with the language, give confidence and help the Committee to better understand how this relates with the SCRA.

Chairman Darrington asked if Senator Nuxoll had a motion regarding the minutes of February 13, 2012. **Senator Nuxoll**, moved, seconded by **Senator Mortimer**, to approve the minutes of **February 13, 2012** as written. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 22, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Approve Minutes of February 15, 2012	
COMMITTEE VOTE	The Board of Commissioners of the Idaho State Bar's Appointment of Joel P. Hazel of Coeur D'Alene as member of the Idaho Judicial Council to serve a term expiring on June 30, 2017.	
RS21259	A Concurrent Resolution stating findings of the Legislature and rejecting certain rules of the Idaho State Police relating to rules of the Idaho Peace Officer Standards and Training Council.	Senator Steve Vick
RS21351	Relating to Bullying	Kim Kane, former director of SPAN Idaho
S 1324	Relating to Attorney's Fees in Civil Actions	Senator Tim Corder
H 455	Relating to Divorce Actions	Michael Henderson, Legal Counsel for the Idaho Supreme Court
H 475	Relating to Suspension of Judgment and Sentence	Michael Henderson

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 22, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, McKague, Mortimer, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator Lodge

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:35 p.m. and asked if there were minutes to be approved. He welcomed the judges to our Committee meeting. The Chairman recognized Senator LeFavour for a motion on the minutes.

MOTION **Senator LeFavour** moved, seconded by **Senator Mortimer**, to approve the minutes of **February 15, 2012** as written. The motion carried by **voice vote**.

Chairman Darrington said the next item of business is to act on the appointment of **Joel P. Hazel, Coeur d'Alene to the Judicial Council** and the Chair would entertain a motion.

MOTION **Senator Davis** moved to send the Idaho State Bar's appointment of **Joel P. Hazel** to the Idaho Judicial Council to the floor with the recommendation that it be confirmed by the Senate. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington said to the members of the Judiciary that while going through the business of today, he would make a brief explanation of how they do business. The first two items on the Agenda are called RS's; that's an acronym for Routing Slip. A Routing Slip means a proposed bill. A member of the Legislature takes a bill to be drafted to Legislative Council staff. It comes back in an envelope package with an RS number. That RS is put before the committee for print. Each member of the committee has a copy of the RS and today the first RS is a concurrent resolution. A motion to print a concurrent resolution sends it immediately to the floor of the Senate, unlike a bill. **Vice Chairman Vick** will present the resolution.

RS 21259 **A Concurrent Resolution stating findings of the Legislature and rejecting certain rules of the Idaho State Police relating to rules of the Idaho Peace Officer Standards and Training (POST) Council.** **Vice Chairman Vick** explained that this was the result of the rejection of Section 091 and 092 of a pending rule, Docket No. 11-1101-1102. The entire rule is about the decertification process of an officer. Section 091 deals with the standards which an officer can be certified and Section 092 relates to the due process or decertification. Both of these sections were removed with the consent of the POST Council.

MOTION **Senator Mortimer** moved, seconded by **Senator Davis**, to print **RS 21259**. The motion carried by voice vote. **Senator Mortimer** asked about the other POST rule with a section regarding veterans which was rejected by the committee and wondered what had happened to that one. **Chairman Darrington** stated that the House had approved that particular rule and both bodies must agree.

RS 21351C1

Relating to Bullying. **Senator LeFavour** explained that this was a rework of the previous bill that she brought before the Committee. This legislation is to reinforce and strengthen Idaho's existing anti-bullying laws, to include cyber-bullying, expand coverage to minors who are not students and to emphasize that all school personnel have a responsibility to enforce school policy. It provides new sections outlining the training for school staff on bullying prevention and best practices in intervening in cases of bullying. Under this proposed legislation, standard language relating to the commission of an infraction is added, removing the "may" so that, should charges be filed, this language appropriately allows the courts to determine whether an individual has in fact violated the provisions of this section of the law.

Senator Davis had some concern about the fiscal note and suggested that the SOP be rewritten. He also referred to page 5, Idaho Code, § 33-1208B, paragraph 1, "...efforts shall be made annually..."; paragraph 3 "...certificated personnel shall annually participate..."; paragraph 4 says "...certificated personnel shall report events of..."; and then paragraph 2 says "School personnel are required to...." He asked if "required to" meant "shall?" **Senator LeFavour** said during drafting there were things added and things taken out, but it does mean "shall." **Vice Chairman Vick** asked if this requirement would apply to private schools and home schools. **Senator LeFavour** said she thought or hoped that it would. **Vice Chairman Vick** said surely it wouldn't require parents to take these classes when they perhaps had only one student. According to the existing language, it applies to everyone in the state. **Senator LeFavour** said it would.

MOTION

Senator Davis moved, seconded by **Senator McKague**, to print a new RS 21351C1 to **RS 21351C2** with the change made on page 3, line 21 of making the colon a period. The motion carried by **voice vote**.

Chairman Darrington explained to the judges that a Senate bill came in a goldenrod cover and is a copy of what was in the other packet (an RS), but now has a bill number on it. All information of what has happened to the bill is recorded on the back.

S 1324

Relating to Attorney's Fees in Civil Actions. **Senator Corder** explained that this bill simply raises the amount pled in a civil action from \$25,000 to \$35,000 providing a conservative inflation based adjustment to Section 12-120 (1), Idaho Code. This would give more individuals access to the court and give some assurance that they could recoup attorney fees.

Senator Davis asked if Kurt Holzer would yield to a question. **Senator Davis** asked if there was a policy reason for a different standard between (1) the amount pled of \$35,000 and (4) personal injury claims remain at \$25,000. **Mr. Holzer** said he thought there were policy reasons; the liability limits that exist that are \$25,000 minimum and while he would probably increase that amount also, but it's this body's determination whether to make these subparts the same. **Senator Bock** asked if there was any real inconsistency in increasing the second number as the first number. **Mr. Holzer** said there are other policies that came into play when dealing with §12-120(4), and primarily it's the minimum limit insurance issue. Mr. Holzer believes that Senator Corder advocates to raise §12-120(1) and not raise §12-120(4).

MOTION

Senator Davis moved, seconded by **Senator LeFavour**, to send **S 1324** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Chairman Darrington pointed out that they would now discuss the House bills which were blue backed and have passed on the floor of the House and referred to this Committee.

H 455 **Relating to Divorce Actions.** **Patricia Tobias** introduced Sr. Judge Michael Dennard to present the bill to the Committee. **Judge Dennard** explained this bill amends Idaho Code § 32-717D to permit a parenting coordinator to charge a retainer fee. Parenting coordinators have provided a vital service to the courts in high conflict family law cases for nearly a decade. However, the Judge explained, it has become difficult to recruit and maintain a list of qualified parenting coordinators because of their inability to charge a retainer.

MOTION **Senator LeFavour** moved, seconded by **Vice Chairman Vick**, to send **H 455** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 475 **Relating to the Suspension of Judgment and Sentence.** **Ms. Tobias** introduced Sr. Judge Jack Varin to present the bill to the Committee. **Judge Varin** explained this bill allows defendants to participate and complete programs in spite of the fact their probation ended while attending these problem-solving court programs. This bill allows courts to extend the period of probation to allow defendants in Idaho's misdemeanor problem-solving courts to participate in a DUI or misdemeanor drug court program. This allows courts to have an alternative to incarcerating such a defendant in the county jail, and help to rehabilitate the defendant, thereby reducing the chances that the defendant may commit other serious crimes, including felonies.

MOTION **Senator LeFavour** moved, seconded by **Senator Nuxoll**, to send **H 475** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:40 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 27, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - February 20, 2012	Senator Bock
RS21317	Relating to Highways and Rights-Of-Way	Transportation Committee
RS21314	Relating to Highway Districts	Transportation Committee
RS21345	Relating to Personal Property Taxes	Local Government and Taxation Committee
RS21332C1	Relating to A Concurrent Resolution stating findings of the Legislature and recognizing the Idaho Digital Learning Academy for its achievements in providing quality online education for Idaho students	Education Committee
H 449	Relating to Penalties	Major Clark Rollins
S 1332	Relating to Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances	Senator Keough
S 1340	Relating to Costs of Court Ordered Testing	Seth Grigg, Idaho Association of Counties
S 1275	Relating to the Traffic Safety Education Program	William Flink

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 27, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order and asked if there were minutes to approve.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll**, to approve the minutes of **February 20, 2012** as written. The motion carried by **voice vote**.

Chairman Darrington stated that he had a letter of unanimous consent from the appropriate committee for the following RS's and asked for a motion to print them all.

RS 21317 Relating to Highways and Right-Of-Way from the Transportation Committee

RS 21314 Relating to Highway Districts from the Transportation Committee

RS 21345 Relating to Personal Property Taxes from the Local Government and Taxation Committee

RS 21332C1 Relating to a Concurrent Resolution stating findings of the Legislature and recognizing the Idaho Digital Learning Academy for its achievements in providing quality online education for Idaho students - from the Education Committee.
Sponsor: Senator Goedde

MOTION **Senator Bock** moved, seconded by **Senator Lodge**, to print **RS 21317, RS 21314, RS 21345, and RS 21332C1**. The motion carried by **voice vote**.

H 449 **Relating to Penalties. Major Clark Rollins**, Idaho State Police, explained this legislation adds a \$20 fine to all violators of the states drug statutes (Title 37, all misdemeanor and felony charges) to ensure continued enforcement and apprehension of these drug trafficking organizations. With the additional \$20 fine on the population base charged with these violations, a dedicated funding source of approximately \$250,000 is created to help offset some of the costs in operating and capital outlay expenses.

The statutes that will be directly affected are: 18-7804, 18-8201, and the following drug trafficking statutes, 37-2732, 37-2732C, 37-2733, 37-2734A, 37-2734B, 37-2734C, and 37-2739A. The same paragraph will be added to each of these sections. It reads:

In addition to any other fine assessed under this section and notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall be assessed against the defendant in the amount of twenty dollars (\$20.00) for each conviction under this section. Such fee shall be paid to the clerk of the district court who shall transmit said fee to the Idaho state treasurer for distribution to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

Chairman Darrington stated that Major Rollins made it clear that it is exclusive to the drug statutes and not to other misdemeanors or felonies. He added that the Statement of Purpose shows approximately 12,500 drug violations a year.

Senator Nuxoll asked if most narcotic cases were investigated by Idaho State Police, the sheriff, or the city police. **Major Rollins** said there were a lot of smaller agencies that did not have a task force. Throughout all districts they work together. **Senator Nuxoll** asked who did most of the work. **Major Rollins** said they tried to focus on the mid to upper-level trafficker while the smaller agency worked the street level. **Senator Nuxoll** wondered why the city and all agencies that helped with investigations weren't being funded. **Major Rollins** said each district works with the local agencies and since most of these cases are intertwined, if the agency is short on funding, the bills are paid by ISP.

Senator Bock asked with these additional fees, what can be done that couldn't already be done. **Major Rollins** said that they hoped to take some of the burden off the taxpayers. They are currently relying on drug donation and seizure. They are trying to get a channel of dedicated funds to assure they have the money. **Senator Mortimer** asked what they had collected from confiscations over the last 2 or 3 years. **Major Rollins** said that varies from case to case. **Chairman Darrington** added that it would also vary from year to year. **Senator Mortimer** asked what were the total fees paid if convicted and how much would this add. **Major Rollins** said he did not have that information.

Michael Henderson, Legal Counsel for the Supreme Court, said in answer to the previous question the fees charged in a felony case are \$225 and in a misdemeanor case about \$137. **Senator Nuxoll** commented that from talking to the police in Lewiston, they needed help with equipment. She said she understood that many of these narcotic cases are investigated by the sheriff and city police department, but there is no guarantee that these funds will go to help them. She will vote no on this bill.

MOTION

Senator Bock moved, seconded by **Senator Nuxoll**, to hold **H 449** in Committee. **Senator LeFavour** said that as a member of the Joint Finance Committee, she has become more aware of the cuts in funds and the stress they are put under.

**SUBSTITUTE
MOTION**

Senator Davis moved, seconded by **Senator Lodge**, to send **H 449** to the floor with a **do pass** recommendation. **Senator Bock** said this was another bill adding another fee and he was not comfortable with this bill. **Senator Mortimer** voiced his concerns over this legislation. A roll call vote was requested by **Senator Bock**. Chairman Darrington, Senator Davis, Senator Lodge and Senator LeFavour voted aye. Vice Chairman Vick, Senator McKague, Senator Mortimer, Senator Nuxoll, and Senator Bock voted nay. The vote failed 5 to 4.

**SUBSTITUTE
MOTION**

Senator Davis moved, seconded by **Senator Mortimer**, to send **H 449** to the **14th order** for amendment. **Senator Davis** said the intent would be to allow the sponsor to allocate some of the funds to go to other agencies. **Senator Bock** suggested that this concept should be considered more carefully, and there was still time to create a new bill. The motion carried by **voice vote**.

S 1332

Relating to Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances. **Senator Keough** explained this bill adds additional language to Idaho Code § 12-117 to state that in any civil judicial proceeding involving adverse parties, a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses. It also amends the code to cover health districts which are not technically regarded as state agencies. Senator Keough explained the technical correction from \$2,500 to \$25,000. She would yield to Representative Burgoyne for further clarification.

Representative Burgoyne pointed out that the purpose of the original statute 12-117 and the purpose of these amendments is to assure that people, whether they are state agencies, local units of government or individuals who suffer abuses because the other party has done something without factual or legal basis, are protected so their increased cost for attorney's fees and the cost of the action are recovered. He stated that also in the legislation (4) if government agencies are going to sue each other, they should be good stewards of the taxpayer's money and be certain that this is a suit that cannot be avoided.

Hethe Clark, representing himself, said the intent of the legislation was adequately covered and he is in favor of the bill.

Don Copple, Davis and Copple, stated that this legislation restores to 12-117 the primary intent of the statute and he urges a do pass from the Committee.

MOTION

Senator Mortimer moved, seconded by **Senator Nuxoll**, to send **S 1332** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1340

Relating to Costs of Court Ordered Testing. **Seth Grigg**, Idaho Association of Counties, explained the intent of this legislation is to clarify that court ordered testing fee be paid by probationer and not the jurisdiction overseeing the probation. This is the current practice and this will clarify that it is acceptable and conforms with the statute. He stressed there would be no new fees with this and would add stability to the current practice. He would yield to Michael Henderson of the Courts for further clarification.

Michael Henderson, Legal Counsel of the Idaho Supreme Court, explained that Idaho Code, § 19-2608, was a matter that the Court identified as needing the Legislature's attention. It would be helpful to clarify what fees could be assessed to the probationer in addition to probation supervision fees. Mr. Henderson said that Title 19 deals with criminal procedures. Chapter 26 deals with proceedings in district court as opposed to magistrate division of district courts, which could be confusing. Chapter 39 deals with proceedings in Magistrate Court. In summary, Mr. Henderson said it makes clear that you are responsible for the cost of testing if you can pay rather than imposing that cost on the taxpayers. He said it was an opportunity for the Legislature to stress its intention in that regard.

MOTION

Senator Davis moved, seconded by **Senator LeFavour**, to send **S 1340** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Prior to the next bill, **Chairman Darrington** made some comments. He said it came to his attention that in some jurisdictions, cities (not counties) when an officer made a traffic stop the motorists were given an opportunity to accept the summons to a driving school run by the city with a fee charged by the city in lieu of the citation. The officer had the discretion to give a citation or not. The Attorney General's opinion was that the cities did not have authorization to do this. One city sought a private attorney's opinion that indicated they didn't need authority. With conflicting opinions, some cities stopped this alternative action while others continued. Meetings were convened with counties, cities, and courts to work out a piece of legislation. The problem was that when they were cited to driving school, no POST fees were paid and POST revenues would obviously decline. There were also no Idaho State Trialcourt Automated Record System (ISTARS) fees paid to support the computer system. This legislation would indicate that the cities could carry on the practice, but if they have to provide the same fee to POST and ISTARS that would normally be provided if the individual had received a citation. After providing this background, Chairman Darrington introduced William Flink to introduce the bill and speak to the legislation.

Relating to the Traffic Safety Education Program. William Flink, POST Administrator, explained the legislation would enable cities and counties to establish traffic safety programs, that allowed a motorist to attend a traffic school in lieu of issuance of a citation for a traffic violation. Attendance at such traffic safety programs would be voluntary and serve as a refresher course in safe driving for motorists who chose to attend them. If a motorist fails to attend after committing to do so, they may be charged with the original infraction violation. The law enforcement officer has the discretion to either issue a citation or offer attendance at a traffic safety school. The legislation also allows counties and cities to charge a fee for such programs and provides that a portion of those fees would be dedicated to the peace officer standards and training fund and to the ISTARS technology fund. The fee could not exceed the cost of the traffic citation.

Jerry Mason, attorney from Coeur d'Alene, representing the Association of Cities, said that for most people the education of driving was one time only. He pointed out that his community started this some ten years ago, and it was well received by all. It simply provides an alternative option and is voluntary for all concerned.

Chief Scot Haug said he is in support of this bill. He said in 2004, Post Falls implemented the first traffic safety program in Idaho. After realizing the benefits of several education based programs, such as DARE (Drug Abuse Resistance Education) and OASIS, which is an anti-domestic violence program and others, they decided to build on these successes. They have educated over 5,000 drivers regarding new traffic laws, the results of risky driving and how to help reduce traffic related incidents in the community. The benefits are (1) a 4 hour educational class vs. a ticket citation, (2) no interaction with a prosecutor, (3) a positive view from the public, and (4) an improved driving base.

Chairman Darrington asked the Chief how the city deals with multiple offenders. **Chief Haug** said the department rule was to allow a motorist to take this course once every 18 months.

Chief Dave Moore, from Blackfoot, said they had followed the lead of Post Falls eight years ago and have had positive results from the traffic education program. The primary targets are young drivers and senior drivers. **Mayor John Evans**, Garden City, also validated the previous comments and added that since 2006 with 5200 participants the positive response from the program has been overwhelming. The most notable response has been from parents of young drivers. **Chairman Darrington** asked if the practice in Garden City was to cite the no-shows. **Mayor Evans** said yes. **Jim Bensley**, Chief of Police, Garden City, would add that since 2006, they have had a 34% reduction of traffic violations.

Lyn Darrington, representing State Farm Insurance, supports this bill, but they had a concern that it would mask infractions and does not give a complete accurate and realistic view of a person's driving experiences.

In conclusion, **Mr. Flink** said this measure is intended to provide a portion to both the ISTAR fund and the POST fund. It is also a good tool for community relations.

MOTION

Senator Bock moved, seconded by **Vice Chairman Vick**, to send **S 1275** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AMENDED #2 AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 29, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to approve - February 22, 2012	Senator Davis
<u>RS21336</u>	Relating to the Directory of New Hires	from Commerce and Human Resources Committee
<u>RS21410</u>	Relating to the Control of Venereal Diseases	Michael Kane
<u>S 1337</u>	Relating to the Sexual Exploitation of a Child	Joel Teuber, FOP Detective Tim Brady
<u>S 1338</u>	Relating to Enticing a Child	Joel Teuber
<u>S 1341</u>	Relating to the Sexual Offender Registration Act	Senator Les Bock
<u>H 484</u>	Relating to Boards of Community Guardian	Representative Tom Trail

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 29, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Mortimer, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator McKague

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order and asked the secretary to call the roll. The first order of business will be the request letter of unanimous consent from the Commerce and Human Resources Committee to print **RS 21336**.

MOTION **Senator Lodge** moved, seconded by **Senator Mortimer**, to print **RS 21366**. The motion carried by **voice vote**.

RS 21410 **Relating to the Control of Venereal Diseases.** **Michael Kane** explained the RS deals with the duty of correctional officers and jailers to test people for certain STDs. He said language pertaining to AIDS was removed as the testing was for HIV, not AIDS. They also removed a disease, chaneroid which is a tropical disease, and added chlamydia which is the most prevalent STD. This legislation removed testing on persons charged with "drug related charges" so that they are not testing unnecessarily on every young person that comes in with drug paraphernalia or marijuana. However, he added, persons charged with any crime "involving the use of injectable drugs" would be tested.

MOTION **Senator Nuxoll** moved, seconded by **Senator Lodge**, to print **RS 21410**. The motion carried by **voice vote**.

MINUTES **Senator Davis** moved, seconded by **Vice Chairman Vick**, to approve the minutes of **February 22, 2012**, as corrected. The motion carried by **voice vote**.

S 1337 **Relating to the Sexual Exploitation of a Child.** **Joel Teuber**, Fraternal Order of Police, explained this bill will amend the current child exploitation laws. He stated that this bill also has the support of the Idaho Prosecuting Attorneys Association, the Idaho Chiefs of Police Association, the Idaho Sheriffs Association, the Idaho Coalition for Justice, and the Idaho Against Human Trafficking Association and letters from those organizations were put in your packets. He continued that they have worked with the local prosecutors and detectives that specialize in these types of crimes in drafting this bill. Mr. Teuber pointed out that the Committee has copies of a proposed amendment and also an engrossed draft of the bill as amended. He further explained that this bill updated definitions to more closely match technological trends that exist in today's society, and more clearly differentiates penalties based upon severity of the crime. Definitions will now all be contained in a separate section. Changes in technology have made some of these crimes much more difficult or impossible to prosecute. This legislation provides updated language that addresses multiple new ways children are being exploited, so that the charged crime(s) more accurately describe the illegal behavior and associated penalties. He said it was bad enough that a child was abused by these predators, but imagine being a child and feeling degraded, put into painful and confusing acts and have those acts memorialized, sometimes put on the internet where they

remain forever. The children are robbed of their innocence and sense of security for life. The primary reason for the proposed legislation is to address current trends of child pornography production and distribution and to counteract the method used by offenders to avoid law enforcement and prosecution. In the last two years, perpetrators in Idaho have used computers, cell phones, web cam, video chat, instant messaging, social networks and other modern technology. Suspects are making contact with underage children trying to exploit them for sexual purposes.

Mr. Teuber continued that they were removing the language for commercial purposes from the Sexual Exploitation of a Child law and the reason for that is the trend is not so much selling child pornography, but in trading it, distributing it, exchanging it, and sharing it with others of like mind. The victimization is the same whether it is sold or not. Currently the commercial purpose language provides a loophole for offenders that share or distribute the pornography and they cannot be prosecuted in Idaho. Possession or accessing sexually exploitative material is a felony and could get up to 10 years. This bill would allow prosecution of anyone that causes or permits a child to engage in or be used to explicit sexual conduct for the purpose of producing sexually exploitative material, of the middle man or producer that advertises, finances, exhibits, publishes or produces, and removes the requirement that the material be "sold." This felony could be up to 30 years. These penalties were not changed from existing law other than removing the requirement that it be for commercial purposes. Other changes in the bill were made to keep consistent with definitions and references.

Senator Bock asked about constitutional law and how possession was treated. **Jean Howe**, Deputy with Ada County Prosecutor Office, said it depended on intention of the material. **Senator Bock** said what if there were drawings rather than photos. **Ms. Howe** said federal law prosecuted for cartoons, etc. **Senator Bock** requested research on the constitutional law and its application from Ms. Howe. **Senator Davis** had concerns that commercial purpose had been removed from 18-1507.

Holly Koole, Idaho Prosecuting Attorneys Association, stated that they were in support of the bill. **Senator Davis** asked if there was disparate treatment between vulnerable adults and the exploitation of a child. Holly deferred to Ms. Howe since she worked on these cases on a daily basis. **Ms. Howe** said it would not change the purpose or intent toward vulnerable adults. **Senator Davis** asked why not mirror the concepts for protecting children and have it apply to vulnerable adults. He pointed out that if "commercial purpose" isn't relevant to protect the child, why is it relevant for vulnerable adults. He thought there should be the same standard. **Ms. Howe** said right now the most important thing to protect children in Idaho is to address this law, not that vulnerable adults are less important. **Senator Davis** said he thought there should be parallel changes for both. **Ms. Howe** said they would definitely look into that. **Vice Chairman Vick** asked how many convictions could there be because of this change in the law. **Ms. Howe** said with the change in technology and the change in the law, it will open up more investigation for law enforcement. but she did not know how many.

Detective Tim Brady, Boise Police Department, was also assigned to the Internet Crimes Against Children (ICAC) Task Force. Detective Brady said they have had several cases that they turned to federal counterparts to be able to prosecute because of the loopholes in state law. He said the way this current legislation is written, if passed, it will allow a more severe penalty for the crime. He doesn't have an exact number, but the numbers will definitely increase from an investigative standpoint. He would estimate probably 10 to 12. **Senator Bock** asked how would someone with a false ID who put something on a cloud in never never land be prosecuted. **Detective Brady** said people often don't tell the truth about what they put on the internet. They must work with the provider of the service to get information about the ip address and their real identity.

Mr. Teuber, in closing, said if the Committee thought they should address the vulnerable adult situation, they would do so. **Senator Davis** said he thought there was no need to add that to the current amendment. **Chairman Darrington** clarified that would be a battle for another time.

MOTION

Senator Davis moved, seconded by **Senator Bock**, to send **S 1337** to the **14th Order** for Amendment. The motion carried by **voice vote**.

S 1338

Relating to Enticing a Child. **Joel Teuber** explained the purpose of this bill is to update Idaho child enticement laws to more closely match technological trends that exist in today's society. The current law does not clearly specify that children can be enticed electronically in many ways other than the Internet. Our society and technology have progressed to the point where communication exists in multiple forums through a myriad of devices, which current law does not adequately address. The proposed changes would allow for prosecution if offenders use new or future technology to entice a child including cell phones, text messages, instant messaging, and even gaming consoles. Some technology does not need the internet to communicate as is required by current code.

Detective Brady added an example from a case last year where a young man, a sexual predator, contacted a 14 year old female child initially online and the communication proceeded to text messaging. They were not able to prosecute under the current enticement code. The offender was prosecuted under a different code and subsequent to that investigation, the victim shared her experience of shame, and how she felt that it was her fault. She succumbed to his words of praise and compliments. He made her feel important, but now she feels dumb and that she cannot trust anyone, especially men. Lastly, he said these people are in our communities and their intention is to have sexual contact with children for their own sexual gratification. These changes in code will help prosecute these people more fully and hold them accountable for their actions.

MOTION

Senator LeFavour moved, seconded by **Senator Nuxoll**, to send **S 1338** to the Senate floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1341

Relating to the Sexual Offender Registration Act. **Senator Les Bock** explained this bill will allow a person who was previously convicted of statutory rape to be removed from the Sexual Offender Registry. The sole purpose of this change is to create an avenue to those who would not now be convicted because of the age between the two people involved.

Monica Hopkins, Executive Director of the American Civil Liberties Union of Idaho, urged the Committee to support this bill because it resolves a pattern of injustice. S 1341 addresses concern about juveniles who are labeled as sex offenders or predators as a result of a consensual relationship. The stigma and consequences that come with that classification have lifelong consequences, particularly registering as a sex offender. It effects future employment opportunities, the ability to attend their child's school functions, and where the offender can live. This bill will create a mechanism for this group of offenders to file a petition for removal from the registry if they meet certain criteria.

MOTION

Senator Mortimer moved, seconded by **Senator Lodge**, to send **S 1341** to the Senate floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 484

Relating to Boards of Community Guardian. Representative Tom Trail explained this bill relates to the Boards of Community Guardian and removes reference to the limitation for successive years on a Board of Community Guardian. A member will continue to serve on the board until that person's successor is appointed. A county can have between 7 to 11 members and may share a board with another county if within the same judicial district. The board obtains information to assess the need for intervention on behalf of an individual who may need a guardian. The ward must be incapacitated as defined by Idaho law. For a guardian to serve a ward; the ward must have no assets, resources, nor family member or friend who might serve as a guardian. Applicants who are developmentally disabled will be referred to Health and Welfare. The passage of this bill will enable guardians to continue to serve many of the needy citizens in Idaho.

MOTION

Senator Lodge moved, seconded by **Vice Chairman Vick**, to send **H 484** to the Senate floor with a **do pass** recommendation. The motion carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 05, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes - February 27, 2012	Senator Lodge Senator Vick
RS21461	Relating to Child Custody	Robert L. Aldridge
S 1339	Relating to the Idaho Trade Secrets Act	Jeremy P. Pisca
H 403	Relating to Abandoned Motor Vehicles	Lt. Col. Ralph Powell
H 497	Relating to DNA Testing	Michael Gamette, Idaho State Police Forensic Services Quality Mgr.

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 05, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:35 p.m. and asked if there were minutes to approve.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Mortimer**, to approve the minutes of **February 27, 2012** as written. The motion carried by **voice vote**.

RS 21461 **Relating to Child Custody. Robert L. Aldridge** presenting the RS for Mark San Souci, explained that a great many attorneys and perhaps judges are not aware of the Servicemembers Civil Relief Act (SCRA) which has very broad application and some strict reservations on what can be done. The first part of this legislation provides that if there is petition for modification of a child custody order and it may be subject to the SCRA because one of the parties is a service member as defined in that act, then the Court determines that it complies to the action. If the modification is in the best interest of the child, and the party member is deployed, the Court can enter a temporary decree which automatically expires upon the termination of deployment. This is an attempt to give some guidance to the Court with respect to those who are deployed.

MOTION **Senator Mortimer** moved, seconded by **Vice Chairman Vick**, to print **RS 21461**. The motion carried by **voice vote**.

S 1339 **Relating to the Idaho Trade Secrets Act. Jason Risch**, representing Premier Technologies, Inc., explained this bill would revise the Idaho Trade Secrets Act to clarify that one violates the Act when he or she takes possession of or retains a misappropriated trade secret. The bill explains the damages recoverable when there is a violation of the act and allows an award of reasonable attorney fees to a prevailing party. In the Act that was written in 1985, misappropriation is defined as stealing trade secrets or if you use them. He said that what happened to Premier Technologies, Inc. was employees were hired by a competitor. Before those employees left Premier, they downloaded a hard drive full of information. The hard drive had all of their trade secrets including employee information, including how they do what they do. Premier struggled with the fact that the people were still working for the company while they downloaded the information; however, they won the case brought against those people. The argument was that while employed, they had taken the hard drive to the competitor so they didn't steal it and they didn't use it. **Senator Davis** interrupted and said didn't the new employer give it to their lawyers who held it so the new employer didn't actually access the information on the hard drive. **Mr. Risch** said they did actually access the information, but they did give it to their lawyers. He said it was wrong to retain it so they have added "retention" to the verbiage in statute.

Senator Bock commented that it seemed to him that the Judge made a mistake and now there is reaction that something is wrong with the law when there is not. He said he didn't have a problem with adding the word "retention" even though it was unnecessary. The area of concern to him was in reference to "rebuttable presumption" as it is used in different ways. He said the fact that it is proven, then the effect is to shift the burden to the other side. **Mr. Risch** said that once there was a misappropriation, a rebuttable presumption is created. He agreed that the phrase is used in other ways in other statutes. This added language was needed because of the necessary proof that someone retained something. **Senator Davis** mentioned that once proven, must there be a separate action that proves harm. He further stated whether the language is in the bill or not, neither decreases nor lowers the burden of proof for the complaining party. **Mr. Risch** said no it would not.

Mr. Risch said they added the attorney's fees provision to the violation of this act which were not adopted in the 1985 version. He explained the amendment to the bill replaces (4) to remove "attorney" and state that all persons acting in concert are liable of this violation. The verbiage came from Idaho's Negligent statutes.

Doug Sayer, owner of Premier Technologies, Inc., said there was a loss of equity when secrets were stolen which was on their financials, and they had trouble gaining the confidence of investors, including their bank. They recognized where the loss occurred and they wanted to pursue this so other businesses would not go through the same. He said they had spent almost three million dollars in the last four years pursuing this. If the statute had been in effect as it is proposed, it would have changed that significantly. In this case, it is very difficult to come forward and produce a damage claim where someone merely retained the trade secret. It's easy to pursue a damage claim when someone is using it, selling it, and actively competing with you. In this situation, they intended to do harm and one of the methods was by taking the trade secrets. **Vice Chairman Vick** asked how this would have changed if retention had been in statute. **Mr. Sayer** said the Judge actually cut the damage claim in half and the jury had a unanimous verdict. **Senator Davis** commented on the kind of damages they incurred and the fear of the new company poaching their good employees. **Mr. Sayer** responded that the new company's plan and strategy was to steal contracts and take them back to Utah. When asked if they were successful in persuading the court that they were entitled to attorney's fees, Mr. Sayer said that post trial motion is still pending.

Kurt Holzer, representing the Idaho Trial Lawyers Association, explained that they support some of the bill, but they do have objections to the bill. One is the addition of the "rebuttable presumption" language, and they have suggested to remove the changes with that language. **Senator Davis** asked what if the legislature meant that if a case of a trade secret misappropriation was once proven, it created a rebuttable presumption that the complainant was harmed. **Mr. Holzer** said that if someone can claim harm, they must show harm. He said the language opens up the wall for punitive damages where punitive damages aren't appropriate. **Chairman Darrington** asked if Mr. Holzer agreed that a "rebuttable presumption" is something that is presumed to be the case and the other party has to rebut it regardless of where it occurs within the law. **Mr. Holzer** said there is a portion of the definition in all areas of the law, but in the Idaho Jury Instructions, there are 6 or 7 pages of explanations and its flexible language with many uses.

Mr. Holzer referred to the amended language in the latter part of the paragraph (4) "...were acting in concert or when a person was acting as an agent or servant of another party." This changes the law of years when principals are responsible for acts of their agents. This makes a person jointly liable with the boss and it doesn't have any requirement that the agent had any knowledge of what he did. Therefore, the proposed amended language has a very substantial problem. He said it appeared that the lawyers in Mr. Sayer's case were bad guys and this is a response to them as opposed to the general role of a lawyer. Mr. Holzer said he would work with the sponsors on the amended language, but it is far too broad as it is written. **Senator Bock** asked if they were afraid if a client brought in stuff knowing he may be sued, and the lawyer takes the case and now has a file, but didn't know he was violating someone's rights. **Mr. Holzer** said that the attorney/client privilege would not insulate the attorney if the attorney moves from acting as an advisor and counselor to a participant in the action.

Mr. Risch, in summary, said that because of his client's situation, they recognized that there was a problem in Idaho's statute. He pointed out that the amendment removed attorney and referred to an agent. Anyone who has knowledge or has deliberate reckless disregard of the facts would be held accountable. **Senator Bock** asked if Mr. Risch and Mr. Holzer were going to work together on drafting and refining the language to be acceptable. Mr. Risch said they would.

MOTION

Senator Davis moved, seconded by **Senator Bock**, to send **S 1339** to the **14th Order** for amendment. The motion carried by **voice vote**.

H 403

Relating to Abandoned Motor Vehicles. **Lt. Colonel Ralph Powell**, Idaho State Police (ISP), explained this legislation would put into statute the requirement for tow truck drivers, operators, and owners on ISP tow rotations to have criminal history background checks through both Idaho and FBI databases. State and national checks would allow for more comprehensive and thorough assessments of those companies and their representatives requesting to be included on ISP tow rotations. There would be no fiscal impact to the state as the one time cost would be borne by the tow company. Lt. Col. Powell said he worked through ISP Procedure changes with Randy Coleson, President of the Idaho Towing and Recovery Professionals Association and Mr. Coleson supports the bill.

There was a brief discussion of the reasons for adding this protection and not leaving it up to the tow company. Any criminal action or not passing the background checks would result in being removed from the rotation list. Lt. Col. Powell said they were not measuring competency or ability as they have a clear set of standards in procedures, but this will provide an additional standard from the federal level.

MOTION

Senator LeFavour moved, seconded by **Senator Lodge**, to send **H 403** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 497

Relating to DNA Testing. **Matthew Gamette**, Idaho State Police Forensic Services Quality Manager, explained this legislation amends Idaho Code, § 19-4902, relating to post-conviction DNA testing conditions and cost. He said if the type of testing requested by the defense, prosecutor, or ordered by the court is not a test that the ISP forensics lab is currently qualified to perform, the ISP shall not be required to outsource the testing or in any way pay for the testing expenses. The most common DNA testing method, the standard nuclear DNA short tandem repeat testing, meets the investigative needs in most cases. This type of testing offered by ISP allows the ISP lab to use the National DNA Index System, commonly referred to as CODIS.

The ISP Forensic Services labs do not offer mitochondrial DNA testing or Y-STR testing, specialty DNA tests not offered by ISP Forensic Services (ISPFS) due to the costly and time-consuming validation process, the extremely high reagent costs, and the low demand for these specialty tests. If specialty DNA tests are required before a trial, it is the responsibility of the petitioner to send and pay for the tests at a private lab. This amendment sets up the post-conviction tests to be performed in the same manner as the "pre-trial" tests. The intention of the amended wording is to clear up the legislative intent of this statute. We believe the intent of the original legislation was to have the state forensics lab provide the service if possible, not to require ISP or ISPFS to pay for post-conviction testing that is not offered by the ISPFS lab.

Senator Davis said he had concern with the meaning of "currently validated" which is added to the bill on page 2. **Mr. Gamette** said they had undergone extensive scientific procedure to make sure the instrumentation and the reagent used in that process meet quality control standards. **Senator Davis** asked what "currently" meant; the date the statute is adopted, the day the court considers the petition for post-conviction relief, or only that process that is validated on the day the Governor signs this bill into law. **Mr. Gamette** responded that the way it was intended is that at the time the test is requested the laboratory has that method currently validated as a procedure. In answer to Senator Davis question of who does the validation, Mr. Gamette said the validation process is directed by the quality assurance program of the Lab. **Senator Bock** also had some concern that a judge might also not understand what they meant by "currently validated" and would like to see that defined clearly in the statute. There was some discussion of the different types of DNA tests with more thorough explanations from Cindy Cunningham of the ISP Forensic Services Lab.

MOTION

Senator Bock moved, seconded by **Senator Davis** to send **H 497** to the **14th Order** for amendment. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 3:08 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AMENDED #1 AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 07, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>RS21438</u>	A Senate Concurrent Resolution relating to Union Pacific Railroad and their 150 year Anniversary	Transportation Committee
<u>RS21431</u>	Relating to Challenges to Apportionment Plans	Senator Davis
<u>S 1370</u>	Relating to Venereal Diseases	Michael Kane
<u>S 1358</u>	Relating to Bullying	Senator LeFavour

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 07, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:35 p.m. and asked the secretary to call the roll. **Chairman Darrington** said he had a letter of unanimous consent from the Transportation Committee requesting that **RS 21438** be sent to print.

MOTION **Senator Lodge** moved, seconded by **Vice Chairman Vick**, to print **RS 21438**. The motion carried by **voice vote**.

S 1370 **Relating to Venereal Diseases. Michael Kane**, representing the Idaho Sheriffs Association, explained this bill modernizes the law in regard to STDs that must be tested for in correctional settings. It also eliminates the need to test all drug related charges. It eliminates a tropical related disease, chaneroid, and adds a more common STD disease, chlamydia.

MOTION **Senator Nuxoll** moved, seconded by **Senator LeFavour**, to send **S 1370** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1358 **Relating to Bullying. Kim Kane**, former Executive Director of Suicide Prevention (SPAN) of Idaho, explained that suicide is the second leading cause of death for youths in Idaho. She said one in seven Idaho high school students have considered suicide and one in eight has made suicide plans and one in fourteen have actually made suicide attempts. In the last five years, Idaho has lost 72 school age children to suicide. Sixteen of those children who took their lives were age 14 or younger. The American Foundation for Suicide Prevention has made bullying a public policy priority stating that research shows that persisting bullying in youth contributes to feelings of loneliness and isolation and can have serious mental health consequences including depression and anxiety. From decades of research there are three factors in place for anyone who seriously attempts or completes suicide: (1) failed belongingness, (2) perceived burdenness and (3) the capability for self harm. SPAN concentrates their prevention efforts on the first two factors. School staff spend more time with our children than any other professionals and often more than the parents. She presented copies of the marked up bill with the proposed amendments to the Committee to follow. She then outlined the bill into 3 main parts: (1) revises what action shall be an infraction (2) addresses school board and school districts, and (3) directs school personnel and administrators as they play a principal role.

Chairman Darrington questioned where these statistics came from and if they were factual. **Ms. Kane** said they came from the Youth at Risk survey which is done every two years. **Chairman Darrington** asked what kind of a sample. **Ms. Kane** said this last year's sample was over 2,000 students. The numbers appear unchanged for the last 3 surveys. The Chairman clarified that she was not suggesting suicide was the only reason necessitating the legislation. **Ms. Kane** said no, that bullying leads to depression, anxiety and a wide variety of psychiatric problems that might last a lifetime. **Senator Mortimer** asked if the legislation was vetted and passed by the Department of Education and if they were in support. **Ms. Kane** said it had been, and she did not believe they objected.

Jessica Harrison, Idaho School Boards Association (ISBA), explained that they worked with Senator LeFavour on this bill; however, ISBA still has concerns with the legislation. One concern is the fiscal note. ISBA believes that increased costs will occur at the school district and charter school level associated with the provision of annual professional development, program costs, administrative costs, and also increased costs associated with enforcement, student discipline, and legal costs. Another of their concerns is the possibility of lawsuits if there is disagreement about whether school personnel intervened as required by the legislation. An additional concern is that it is duplicative. It is already the obligation of a teacher or administrator to protect the health, welfare, and safety of the district's students and to follow district policies and address disciplinary matters. The Code of Ethics for Professional Educators also requires a certificated professional to engage in appropriate supervision of students to ensure safety and failure to do so could lead to termination. She said that their schools were already participating in events to teach or prevent the bullying issue.

Senator Davis said he would like to have information provided on the amount required for the fiscal note. **Senator Mortimer** asked if there were comments about the phrase "regardless of location" and did that increase responsibility from what it is today. **Ms. Harrison** said there was significant concern by the school district that this would include areas outside of the school location. **Senator Mortimer** asked if the districts felt that most or all of the changes made in this legislation were covered in the existing district policy. **Ms. Harrison** said yes. **Senator LeFavour** said this was language from ISBA. **Chairman Darrington** asked at what point does the doctrine of in loco parentis for the schools end in the community and start. He said it appears that would play a role on how far the authority of the school would go. He asked if she was suggesting that this legislation would go beyond the school. **Ms. Harrison** said that was a concern and the phrase was not put in at their suggestion. **Senator LeFavour** said the reason for the phrase was that they might be in a vehicle.

Terry Crozier, an Idahoan representing the parents and grandparents who want their children safe. **Chairman Darrington** asked what this legislation would do that is not now being done under the law and policies. **Mr. Crozier** said it would give them more tools.

Rob Winslow, Executive Director of the Idaho Association of School Administrators, said the Association has some of the same concerns of the ISBA. They do support strengthening Idaho's bullying laws, but they feel this legislation is similar to what they are already doing as they are committed to provide a safe environment.

Jim Baugh, Executive Director of Disability Rights of Idaho, testified in favor of the bill with the amendments included. Children with disabilities are often victims of bullying. He said they need to do whatever is necessary to keep children safe. He pointed out that the amendments to Title 18 are in the criminal code and don't specifically impose any obligations on school districts, but are imposed on law enforcement and prosecutors to prosecute the infraction of sexual harassment or intimidation.

Monica Hopkins, American Civil Liberties Union (ACLU), said that the state anti-bullying laws are wholly inadequate to protect students from bullying in school and need to be strengthened. However, S1358 as written may threaten constitutionally protected student speech and impose unconstitutional restrictions on students outside of school. **Senator Mortimer** asked what she meant by infringing on someone's constitutional rights. **Ms. Hopkins** referred to page 1, section (2) the definition of "harassment, intimidation or bullying" is overly broad and could be strengthened by adding "and" at the end of (2)(a)(iv) and follow up with (b) "Is sufficiently severe, persistent or pervasive..."

Sarah Lee, former educator, supports the bill and suggested more training to certified staff of a softer way of handling bullies, i.e. counseling. She said consistency is important and the problem of bullying needs to be addressed.

Barbara Kemp, read her son **Abbot Pinkerton's** testimony, who was bullied throughout elementary and junior high school. His letter said he had thoughts of suicide, but had a supportive and caring family. Abbot was an Asperger kid and is now 21 years old.

Robin Nettinga, Idaho Education Association, spoke in support of S1358. She explained that in the past decade, teenage bullying had expanded to malicious words and harmful pictures that can rocket around the school on the internet and cell phones in minutes. This issue is of special importance to educators because bullied students are far more likely to fall behind in their studies, get sick and/or depressed, miss school, and drop out. The National Education Association (NEA) estimates that 160,000 children miss school every day due to fear of attack or intimidation by other students. The NEA has developed the "Bully Free: It Starts with Me Campaign," which includes training for teachers and education support professionals employed in public schools. This free bullying and sexual harassment prevention and intervention training is built on a research-based curriculum. The training spells out concrete steps educators can take to prevent bullying and lays the groundwork for implementing school-wide engagement in bullying prevention. The IEA has a group of Idaho teachers who have been trained and, when invited, can deliver quality professional development on this topic.

Senator Davis asked if she wanted the Committee to believe that the teachers currently lacked an understanding of bullying and how to prevent it. **Ms. Nettinga** said no she did not want the Committee to think that; she wanted to provide more tools through training and professional development with a clearer understanding for teachers and support staff. **Senator Davis** said he was concerned with a teacher being asked to attend one more in-service class. He added that a student may react at school based on things that happen at home and it probably can't be resolved by code. He said he found value in wanting to do something with the texting problem, etc., but the schools say there are tools currently in place, but today's solution will cost more money. **Ms. Nettinga** said that still her concern is for members to have the tools that they need in order to help children succeed. **Senator Mortimer** asked about the language on page 3, "...include a provision that school personnel shall intervene or facilitate intervention on behalf of students facing harassment,..." He wondered if that would put more responsibility on teachers and possibly open up liability for teachers. **Ms. Nettinga** said that language does put some additional responsibility on the educators, but at the same time it also provides them with

tools. **Senator Mortimer** asked if those words "intervene or facilitate" could have been changed to have less liability. **Senator LeFavour** said that the language was in the bill that was passed in this body last year and also was submitted to the group of sponsors. **Chairman Darrington** asked if Ms. Nettinga would support criminal penalties for teachers who in the eyes of parents or others didn't deal with this effectively in the classroom or hallways they were supervising. **Ms. Nettinga** said she did not have an answer as it would require deeper thought.

Sylvia Chariton, Vice President of Public Policy for the American Association for University of Women in Idaho (AAUW), supports S1358. She said sexual harassment is a growing problem in schools nationwide. Often students have observed or witnessed sexual harassment, and yet it is rarely reported.

Julie Lynde, Executive Director of Cornerstone Family Council, explained that they support the sponsors in seeking a remedy to the problem of bullying, but the proposed legislation is a problematic overreach; and therefore, they oppose the bill. **Senator Davis** asked how this bill applied to home schools since at the print hearing, Senator LeFavour thought the bill would have application in the home school environment. He asked where is the language that is troubling regarding home schools. **Ms. Lynde** responded that the language that required the teacher in-service appears to require home school educators to attend training. **Senator LeFavour** said that the code directs them to follow their district bullying policy, and if they are not part of the school district, it would not apply.

Barry Peters, President of Idaho Coalition of Home Educators, explained that the amendments that were described address many of the concerns with the effect of this bill. He still questioned whether all these rules were applicable in a home school setting. He suggested a clear statement in the bill that these provisions apply within the public school setting. He also had concerns about the language changed from "may be" an infraction to "shall be" an infraction. He believes that language to be excessive and hoped through the amending order these issues would be addressed. **Senator Vick** referred to page 1, line 15 and "school property." He asked if that was a concern and did it apply to home schools. **Mr. Peters** said it could be viewed that way as well as in a vehicle and there needs to be a clear exclusion from these provisions that might apply to home education.

Jeni Griffin from Idaho Falls, said her son, Todd, committed suicide nine years ago and he got no protection from the teacher. Ms. Griffin is in support of the bill.

Fairy Hitchcock opposes the bill and suggests that children are taught kindness through literature.

Tina Young, a BSU Counselor, and **Grace Owens**, a retired high school teacher, testified in support of the bill.

Eric Anderson, who was bullied as a student, said this bill will give tools to the teachers and there should be less complacency of faculty regarding this problem. He supports the bill.

Barbara Kemp, who previously read testimony from son, Abbott, supports the bill, but does question the constitutionality.

MOTION

Senator Nuxoll moved, seconded by **Senator Mortimer**, to hold **S 1358** in Committee.

**SUBSTITUTE
MOTION**

Senator Bock moved, seconded by **Senator McKague**, to send **S1358** to the **14th Order** for Amendment. **Senator Davis** voiced concerns. **Senator Mortimer** said much more work should be done on the bill. **Senator Bock** said many had worked on this issue. **Senator Lodge** said they needed time to work on the bill and she would prefer to hold the bill in Committee. There was a roll call vote. Chairman Darrington, Senators Davis, McKague, Bock, and LeFavour voted aye, and Vice Chairman Vick, Senators Lodge, Mortimer, and Nuxoll voted nay. The substitute motion passed 5 to 4.

RS 21431

Relating to Challenges to Apportionment Plans. **Senator Davis** explained this legislation grants to the Idaho Supreme Court the authority to establish rules establishing the time periods to challenge an appeal of reapportionment plans, both legislative and congressional, approved by the redistricting commission, and as the court of original jurisdiction of then-existing plans.

MOTION

Senator Lodge moved, seconded by **Senator LeFavour**, to print **RS 21431**. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 3:10 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 12, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to Approve - February 29, 2012	Senator Mortimer
RS21421C1	Relating to Certificates of Insurance	Commerce and Human Resources Committee
S 1380	Relating to Child Custody	Robert L. Aldridge
H 595	Relating to the State Victim Notification Fund	Michael J. Kane
H 448	Relating to Fees; Peace Officers Standards and Training (POST) Purposes	William L. Flink, POST Administrator
H 532	Relating to the Peace Officer Standards and Training Council	William L. Flink

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 12, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:33 p.m. and asked if there were minutes to be approved.

MOTION **Senator Mortimer** moved, seconded by **Senator Bock**, to approve the minutes of **February 29, 2012**, as written. The motion carried by **voice vote**.

RS 21421C1 **Relating to Certificates of Insurance**, with a letter of unanimous consent request from the Commerce and Human Resources Committee to print the RS.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Nuxoll**, to print **RS 21421C1**. The motion carried by **voice vote**.

S 1380 **Relating to Child Custody. Robert L. Aldridge**, explained that he sent this new bill out for comments to the Family Law section and the Court system for approval. He did not receive anything from Family Law, but did receive a memorandum from the Supreme Court summarizing the comments they had received from one of their judges. He reviewed to the committee the bill and two possible amendments based on these comments. The bill is based on the Best Practices in addition to the requirements of the Servicemembers Civil Relief Act (SCRA) and in this case related to deployment situations. The bill first requires that the court determine if the Act applies and then act accordingly. The Department of Defense has a list of Best Practices which it believes states should enact to give additional protection to service members, especially when on deployment, and they are as follows:

1. This bill provides protection in the new statute requiring that any modification while the service member is deployed can only be a temporary order and expires on the completion of deployment.
2. The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined.
3. Allow expedited hearings upon the request of a service member.
4. Let the court use electronic testimony when the service member is unavailable.

Mr. Aldridge said there were two alternate amendments that were written to address the comments from the court. The first amendment would continue with Section 1, (a) "...the order or decree shall expire [ten days after notification to the court, and to all persons entitled to notice in the action, of the deployed servicemember's completion of deployment unless the court finds that resumption of the custody order in effect prior to the entry of the temporary order is no longer in the child's best interest.]" The other amendment is more lengthy and adds ["...that the court may thereafter conduct an expedited or emergency hearing for resolution of the child's custody within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child if the order expires."]

Mark San Souci, Department of Defense Regional Liaison for the Northwest, said he had provided Bob with the statutes from Alaska, Oregon and Washington and he appreciated his work on the bill. They were satisfied with the re-write.

MOTION

Senator Mortimer moved, seconded by **Senator Nuxoll**, to send **S 1380** to the **14th Order** for Amendment. The motion carried by **voice vote**.

Chairman Darrington explained that the next bill, H 595, was identical word for word of the same bill that was passed previously, went to the floor of the Senate, went to the House, and for reasons beyond any of our control, was re-written word for word, given a House number and is back before us. There is nothing different about it.

H 595

Relating to the State Victim Notification Fund. **Michael J. Kane**, representing the Idaho Sheriffs Association, was here to discuss the bill, but there was no need as a motion was made after the Chairman's comments.

MOTION

Senator Davis moved, seconded by **Senator Lodge**, to send **H 595** to the floor with a **do pass** recommendation. The motion carried by **voice vote**. **Vice Chairman Vick** voted no.

H 448

Relating to Fees; Peace Officers Standards and Training (POST) Purposes. **William L. Flink**, POST Administrator, explained that POST is responsible for the minimum employment and training standards for nearly 5,700 law enforcement personnel serving the criminal justice system in Idaho. The officers serve nearly 200 state, county and municipal agencies. H 448 amends Idaho Code, § 31-3201B, to increase the POST fee (charged to any individual found guilty of a felony, misdemeanor, or traffic, conservation or ordinance violation) from \$10.00 to \$15.00. The fee amounts to approximately 72% of POST's total revenue, and the fee is in its third year of declining revenue. The POST fee has not been modified since July 1, 2005. The Consumer Price Index (CPI) has risen 16.4% since 2005. POST expenses are adversely affected by the rising CPI. Mr. Flink said the proposed fee increase of \$5.00 (which would provide \$3 for maintenance to bring funding up to sustain existing expenses and needs; and \$2 for growth in operations through 2017) is projected to generate between \$1,056,000 to \$1,139,530 allowing a modest growth of \$325,000 to \$475,000 for POST to take forward to 2017.

Mr. Flink outlined the importance of approving this legislation.

1. to ensure that public safety officers receive the necessary training to perform their responsibilities;
2. to provide adequate resources to maintain state-of-the-art classrooms;
3. to maintain and replace required equipment and training materials;
4. to allow POST to meet the minimum requirements identified through job task analyses; and

5. to adequately fund POST'S office of Professional Responsibility, and remain vigilant against acts or allegations of unethical or criminal violations within the criminal justice profession.

Chairman Darrington asked what the agencies were expected to pay for use of the POST academy. **Mr. Flink** said the basic training classes were paid by POST, and self-pay training was about \$4,700. **Senator Nuxoll** asked if crimes were going down, or if there were more officers that caused this revenue situation. **Mr. Flink** said the statistics show that most agencies are stagnant in the hiring practices. He said they are faced with approximately 83,000 fines lower than in 2009. **Vice Chairman Vick** said a county with a high turnover rate might use the service more than some other county which could cause an increased costs. **Mr. Flink** said while that is true, mostly the turnover rate is the smaller agencies. **Chairman Darrington** asked if law enforcement agencies could hire an uncertified officer and they then had 12 months to certify. **Mr. Flink** said that was true. **Senator Mortimer** asked if there was a reason why the city and county agencies were not participating in the cost. **Mr. Flink** said that the turnover problems were the smaller agencies that did not have a lot of funding. POST does pay for their basic training, but do not pay fees for their ongoing in-service training requirements that they must attend and complete every two years.

Chris Goetz, Sheriff of Clearwater County, explained, as a small agency, they are in favor of the bill. They depend on POST education and currently have 3 deputies in training at the Academy. They have to hire part time employees to cover some shifts and those employees have full time jobs. He stated that if the fee increase doesn't pass, it would mean cancelling academy classes and increasing the time of getting instructors certified which are both negatives. Sheriff Goetz said POST plays a big role in training peace officers in Idaho and are very good at it. They rely on them; he urged the committee to support this increase.

Mike Kane, representing the Idaho Sheriffs Association; **Jeff Lavey**, Meridian Police and Idaho Chiefs of Police Association; **Justin Ruen**, Association of Idaho Cities; and **Chief Dave Moore**, Blackfoot Police and Vice Chair of POST Council, all spoke in favor of the bill. They all expressed the needed training provided to officers in Idaho by POST and that it must be centralized. **Mr. Kane** said when he was in POST Council, they had "law week" where they spent the week learning Idaho criminal law and how to testify in court. The amount of information that is imposed on these new officers is incredible. The more training, the less lawsuits will be seen in cities and counties. It is important that this bill is passed to stabilize the funding for POST.

Chairman Darrington added that liability is very real to cities and counties and all police agencies and training through POST will establish the do's and don'ts for an officer with regard to the status of liability, or the lack there of. **Mr. Flink** spoke on the subject of liability. A police officer has the right to take a person's liberty away which will sometimes cause liability. The use of force, responding to emergency pursuits, or emergency services also creates liability. They have tried to limit the liability facing the cities, counties, and state officers. This state is unique in that police training is allowed within one year of hiring. They have been striving to create a standardized curriculum for all programs over the last year and a half. If they can't find some relief for fiscal problems, their programs would suffer and would have a 'cause and effect' on the officers that are serving the public. **Vice Chairman Vick** asked if they could carry forward funds from year to year. **Mr. Flink** said if they had money under a million dollars, they could carry it, over a million it would go back to the general fund. At this time, they do maintain \$500,000 in the budget line in order to fund themselves for the first couple of months of the fiscal year. **Vice Chairman Vick** expressed concern over the number of fees put on top of fines. **Mr. Flink** said

that in this state the criminal pays for the law enforcement services. He believes that it is better to assess a fee against a criminal than to tax the average citizen.

MOTION

Senator Davis moved, seconded by **Senator LeFavour**, to send **H 448** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 532

Relating to the Peace Officer Standards and Training Council. Sharon K. Lamm explained this bill adds Idaho Code § 19-5118 to allow the POST Council the legal authority to collect, deposit and spend fees for dormitory room usage, for training other than basic training, and for the use of POST facilities and training equipment by non-law enforcement institutions. This proposed legislation is basically a housekeeping item for POST Council. The fees have been collected and spent for sometime, so this will give the Council authority to continue to do so legally.

MOTION

Senator Lodge moved, seconded by **Senator Mortimer**, to send **H 532** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

**AMENDED #1 AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 14, 2012**

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment	Gary Scheihing of New Plymouth, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2012 and expiring January 1, 2015	
<u>H 570</u>	Relating to the Peace Officer and Detention Officer Temporary Disability Act	Paul Jagosh, Idaho Fraternal Order of Police
<u>H 514</u>	Relating to Disturbing the Peace	Representative Nonini
<u>H 376</u>	Relating to Successor Corporations	Russell Westerberg

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington
Vice Chairman Vick
Sen Davis
Sen Lodge
Sen McKague

Sen Mortimer
Sen Nuxoll
Sen Bock
Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds
Room: WW35
Phone: (208) 332-1317
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 14, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:30 p.m. and asked the secretary to call the roll. The Chairman changed the order of the Agenda to present the bills first and then the hearing of the Gubernatorial Appointment for the Parole Commission.

H 570

Relating to the Peace Officer and Detention Officer Temporary Disability Act. **Paul Jagosh**, Idaho Fraternal Order of Police, explained the purpose of the Peace Officer and Detention Officer Temporary Disability Act that was passed in 2007 was to cover the gap between workers compensation time loss benefits and an officers full rate of pay. Time loss benefits have a maximum payment which is sometimes less than what an officer makes, creating a financial hardship for the officer and his family after being injured in the line of duty. To explain the reason for this change, he cited the example of the two Idaho State Police Officers who were intentionally run over while on their motorcycles. Since they were not responding to an emergency or in pursuit of a violator of the law, as in the current statute, they were not covered. Fortunately for the officers, ISP paid these benefits from their budget for one year. The added verbiage to the law covers when the injury is caused by the actions of another person. This is a temporary benefit administered by Workers Compensation. They and their doctors determine when this injury ceases to exist and the officer can return to work. This bill has no impact on the State General Fund. There is a dedicated fund from a \$3.00 fee added to misdemeanor and felony convictions. Currently, there is a balance of \$562,000 in the fund.

Senator Bock asked if he could explain how this was limited to the performance of the duties of the police officer. **Mr. Jagosh** said the officers would have to be on duty and he didn't know how to further define their work. **Senator Davis** suggested that the answer could be found in paragraph (1), but he further asked suppose there are two officers that are on duty and involved in horseplay and someone gets hurt. **Mr. Jagosh** said the legislative intent is if doing their duties and they are injured, not in horseplay, and he thought workers compensation would deny such a claim. **Chairman Darrington** asked Chief Masterson if he would like to respond to the question. **Chief Masterson** said in response to Senator Davis and Senator Bock, the discussion that follows when an injury is caused by another, he believes paragraph (1) has to be in effect for (c) to follow. He also pointed out that an officer injured in a horseplay incident is not considered performance of duties and would not be submitted by them and there are also effective screenings in place by workers comp and the industrial commission to make a determination that the subsets of this law applies.

Chairman Darrington asked if there were others to speak to or in favor of H 570. **Chief Michael Masterson**, representing Boise Police Department, and past president of the Idaho Chiefs Association, said that there were some areas that needed closure. The way the bill was written with response to emergency or apprehending a suspect doesn't cover an officer investigating a suspicious activity and being attacked or injured. The officer is in the performance of his duties and attacked by another. The wording in this proposed bill will cover officers that provide that protection.

Paul Jagosh, in closing, said he realized it may be the last time he stands before the Chairman in this Committee, and he thanked him for his service and dedication to the law enforcement community and helping meet the needs for all these years.

MOTION

Senator Mortimer moved, seconded by **Senator Nuxoll**, to send **H 570** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 514

Relating to Disturbing the Peace. Representative Nonini explained this bill is to provide additional provisions relating to Disturbing the Peace. In Idaho Code, § 18-6409, in (1) by adding "...conduct that is intended to seriously alarm or harass a person such as would cause a reasonable person substantial emotional distress,..." within the description of what constitutes disturbing the peace. He said this was brought to his attention by some constituents that were being continually harassed by a neighbor. When they looked into it with the Sheriff Deputy, the prosecuting attorney in Kootenai County, and Mike Kane, it became more of a statewide issue. Last year he had tried to amend the stalking statute and at that time had opposition from the Prosecuting Attorneys Association and the Sheriffs Association so he didn't proceed. He continued to work on it through the summer with the Kootenai prosecuting attorney, Barry McHugh, trying to come up with some compromise language and then got into the Disturbing the Peace statute. The four attorneys in the House Judiciary & Rules Committee went back and forth, changing the bill at the print hearing. It came back for a bill hearing in the House Judiciary & Rules Committee with the language that the attorneys had put in it and it got the support of the Sheriffs Association and the Prosecuting Attorneys Association. It is another tool to allow groups to deal with these issues that come up occasionally when you have a neighbor that continually harasses a group of neighbors within an area.

Senator Davis asked what "traducing" means. **Representative Nonini** did not know. **Senator Lodge** asked if this legislation would apply to someone that was not your neighbor, but came into your neighborhood and harassed you or your family. **Representative Nonini** said he understood that it would if the conduct was intended to "seriously alarm or harass." **Senator Lodge** asked if it would cover a person that didn't say anything, was not loud, just stood in front of your house with a banner that was emotionally disturbing to you. **Representative Nonini** presented some examples of a particular neighbor that continually harassed a group of neighbors in his legislative district, by taking a couple of sheets of tin off a shed that were approximately 10 feet long by 4 feet wide and put them together on stakes, then spray painted obscenities. The neighbors came up the shared road and had to see the signs. They went to the County and got them to change the sign ordinance which addressed that one issue. Now he can just put a smaller size sign up. There are other issues related to the signage because when the lady neighbors are driving without their husbands, this neighbor had a tendency to tailgate them almost creating a road rage incident. And when they look into the rear view mirror to try to pull off, he is giving them an offensive hand gesture. That's harassment. In another case recently, the road department had removed a sign that they had installed on a roadway and this harassing neighbor called the sheriff's office and said that these neighbors that

were being harassed took the sign down and so the sheriff went to investigate the people that were being harassed with the complaint that they took the sign down. Representative Nonini concluded that this was the best language they could come up with to help the situation.

Fairy Hitchcock, Hitchcock Family Advocates, opposes the legislation and explained that "traducing" meant continual pestering.

MOTION

Vice Chairman Vick moved, seconded by **Senator Mortimer**, to send **H 514** to the Floor with a **do pass** recommendation.

**SUBSTITUTE
MOTION**

Senator Bock moved, seconded by **Senator LeFavour**, that **H 514** be **Held in Committee**. **Senator Bock** stated that the language that concerned him was "seriously alarmed" or "harassed" and regarding Senator Lodge's concern of where the line was drawn. He stated the legislation was overly broad and he saw no reason for creating this opportunity for unconstitutional law. The substitute motion failed by a **voice vote**.

**ORIGINAL
MOTION**

The original motion was to send **H 514** to the Floor with a **do pass** recommendation. A roll call vote was held. Chairman Darrington, Vice Chairman Vick, Senators Lodge, McKague, Mortimer, Nuxoll voted aye. Senators Bock and LeFavour voted nay. The motion passed 6 to 2.

H 376

Relating to Successor Corporations. **Jesse Taylor** explained the situation regarding their client. Crown Cork & Seal purchased one of its competitors in 1963, Mundet Cork, another bottle-cap maker. For \$7 million, Crown obtained a majority stock interest in Mundet. Before the purchase, Mundet had run a small side business manufacturing asbestos insulation, but had shut it down and focused on its bottle-cap production by the time Crown became involved. Within 92 days of Crown's obtaining its interest in Mundet, everything left from Mundet's insulation division, idle machinery, leftover inventory, and customer lists were sold to a New Jersey insulation company. With only its bottle-cap business, remaining, Mundet was merged into Crown in 1966 when Crown acquired the remainder of the Mundet stock. Although Crown never manufactured, sold, or distributed any asbestos-containing products, its brief involvement with Mundet made it a target of asbestos-related lawsuits. Crown has been hit with more than 300,000 asbestos tort claims during the past 40 years. Crown's initial \$7 million investment in Mundet has resulted in more than \$700 million in asbestos-related payments.

Russell Westerberg, of Westerberg & Associates, addressed the Committee. A written copy of Mr. Westerberg's testimony is included in these minutes as Attachment #1. He declared that the act known as successor asbestos-related liability reform legislation previously passed in fifteen states and approved in neighboring states of Utah and Arizona this year. It simply allows innocent successor companies like Crown Cork & Seal that acquired and merged with asbestos-tainted companies prior to the promulgation of the 1972 OSHA asbestos regulations to be treated no worse than those companies that acquired asbestos-tainted companies after 1972, that had the benefit of being forewarned and to protect themselves from unfair successor liability by maintaining the acquired companies as subsidiaries.

Barbara Jorden, Idaho Trial Lawyers Association (ITLA), explained that the bill is sponsored by Crown, Cork & Seal and believes it to be a special interest legislation that is uniquely tailored to benefit one company or a group of companies, but it has not affected any other companies in the United States other than Crown, Cork & Seal. She said in the fifteen years they have been trying to pass this in all of the states, it is only for their company. Ms. Jorden recommends that the bill be held in Committee. Crown Cork & Seal is a multi-national company with net sales nearing \$8 billion dollars a year. Even though they do continue to have payouts for asbestos-related claims, the company itself is not struggling and there is no impact on their bottom line. She further stated there is no asbestos crisis in Idaho. There are very few claims here and no companies that are manufacturing or selling asbestos related products in our state. The ITLA believe this bill is unconstitutional and Ms. Jorden referred to Article 3, Section 19, that local and special laws are prohibited and should not be passed.

Senator Bock stated (1) you don't buy stock, you buy assets; and (2) if you acquire the stock, then you cannot complete the dissolution of the acquired company because that opens the door to liability. Those are the standard rules and procedures for acquisition of assets and stock. He said he was struggling with why this company would be treated any differently than any other company involved in acquisitions. **Mr. Westerberg** said that in 1963, when Crown Cork acquired Mundet as a bottle cap producing company with no knowledge that they ever had an asbestos manufacturing operation.

A discussion ensued regarding other examples of a company acquiring another, i.e. a medical company that produced a product that caused the death of a lot of people, a risk that was unknown at the time of the acquisition. He asked how that scenario was different than the one of his client. **Mr. Westerberg** said it was simple; the referenced company was responsible for manufacturing a substance that had a disastrous effect on health. He repeated that Crown Cork never manufactured, distributed, or had anything to do with asbestos. **Senator Bock** then brought up the instance of phthalimide and that company. **Mr. Westerberg** agreed that the person injured by that substance should have a right to access the assets of the company that produced that substance. The example given is about someone that should have some culpability for making something that harmed other people. He reiterated that Crown never made anything called asbestos. He concluded that according to the trial lawyers, it was indicated that the bill was unnecessary because Crown is profitable and needs no relief. His closing comment was that there was a new Director of Commerce and presently engaged in going around the country trying to recruit investment and business in Idaho. What kind of message will be sent to the outside world since the state legislature is the window to the state.

MOTION

Senator McKague moved, seconded by **Senator Nuxoll**, to send **H 376** to the Floor with a **do pass** recommendation. A roll call vote was requested. Chairman Darrington, Vice Chairman Vick, Senators Lodge, McKague, Mortimer, Nuxoll voted aye. Senators Bock and LeFavour voted nay. The motion prevailed.

GUBERNATORIAL APPOINTMENT

Gary Scheihing of New Plymouth, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2012 and expiring January 1, 2015. Mr. Scheihing said he had 37 years of law enforcement experience, ranging from dispatcher to Chief of Police. He has a proven management record of improving employee productivity, morale and efficiency. He also had communicated openly with employees, the media, and the public, creating a positive law enforcement image in the community. He is an expert in developing, training, and day-to-day operations of a K-9 unit and state-of-the-art K-9 facility. Regarding the Commission, he discussed the changes and how the information on inmates with the Hearing Officers had improved. **Chairman Darrington** mentioned that they are hearing inmates sooner, before their eligibility date. **Mr. Scheihing** said they have a plan and the inmate knows exactly the steps he must take to get out. **Chairman Darrington** asked about his attitude on revocations and was he a one chance guy or a two chance guy. **Mr. Scheihing** said he had to look at everything the guy has done and go from there. He and Senator Lodge discussed his work with canines.

Director Olivia Craven discussed the programs within the institution and how helpful they had been. She said that misdemeanor probation has an effect since they are dealing with people at a lower level before they are committed to prison. The Parole Commissioners, past and present, came to the podium. Mark Funaiolo and Bill Young have just retired from the Commission, but wanted to share their experiences with the Committee. Janie Dressen, Bud Langerak and Mike Matthews are current Commissioners. They talked about the hearings, the drug issue, and the paradigm shift in the Courts. There are many programs, and the Pathways Program is a great asset. Mr. Matthews stressed that affecting revocation was the economy and the another difficult situation to address was drug addiction. All in all, they are making tough decisions and have enjoyed the comradery of each other.

COMMITTEE VOTE

Senator Bock moved to send the gubernatorial appointment of Gary Scheihing to the Commission on Pardons and Parole to the floor with the recommendation that it **be confirmed** by the Senate. **Senator Nuxoll** seconded the motion. The motion passed by **voice vote**.

Olivia Craven introduced Wes Greer and Connie Morgan and thanked Senator Darrington for his work with the Commission. She and her staff presented the Senator with a plaque noting their appreciation and a picture for him to hang in his mountain cabin.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 3:10 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AMENDED #2 AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 PM - PLEASE NOTE TIME CHANGE -
Room WW54
Wednesday, March 21, 2012

SUBJECT	DESCRIPTION	PRESENTER
	<u>Minutes to approve:</u>	
	March 5, 2012	Senator Nuxoll
	March 7, 2012	Senator LeFavour
	March 12, 2012	Senator Bock
<u>RS21477</u>	Relating to Garnishments	John D. Watts
<u>H 648</u>	Relating to Judgment; Relating to an examination of Defendant for Evidence of Mental Condition; Certain Expenses	Senior Judge Barry Wood
<u>H 651</u>	Relating to Judges; Relating to Salaries of Judges	Patricia Tobias

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 21, 2012

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:10 p.m. and asked if there were minutes to approve.

MOTION **Senator Nuxoll** moved, seconded by **Senator Mortimer**, to approve the minutes of **March 5, 2012** as written. The motion carried by **voice vote**.

RS 21477 **Relating to Garnishments.** **Chairman Darrington** explained that this bill was a courtesy print for Senator Mortimer so the bill could be circulated among all interested parties during the interim.

MOTION **Senator Lodge** moved, seconded by **Vice Chairman Vick**, to print **RS 21477**. The motion carried by **voice vote**. **Chairman Darrington** said it would be introduced to print and not be back into the Committee.

H 648 **Relating to Judgment; Relating to an examination of Defendant for Evidence of Mental Condition.** **Senior Judge Barry Wood** explained this legislation would provide an improved process for the screening and assessment of persons who have been found guilty of felonies in order to identify those who have a substance use disorder or serious mental illness, and then provide a plan of treatment if the person is allowed to remain in the community on probation. The legislation covers proposed amendments to 19-2524 and 19-2522.

Judge Wood first addressed the amendments to Idaho Code § 19-2524 in two steps. Under current law, the Department of Health and Welfare is required to pay all costs for both substance abuse and mental health ordered under 19-2524. By the proposed amendments, the Department of Correction would bear the expense for screenings, assessments and treatment for substance use disorders, while the Department of Health and Welfare would bear the expense for mental health examinations and treatment. Costs for such assessments, evaluations and treatment could be recovered from offenders based on their ability to pay and any funds they receive from other sources for the services provided. The second step has a delayed implementation date to become effective March 1, 2013 and is at the request of the Department of Correction in order to accommodate these changes.

Judge Wood then addressed the amendments to Idaho Code § 19-2522, which provides that a court shall order a mental examination of a defendant when there is reason to believe that the mental condition of the defendant will be a significant factor at sentencing. The bill would allow the use of a prior report of a mental health examination to be used to satisfy the requirements if the report included the required information and the examination was sufficiently recent to reflect the defendant's present mental condition. So while the number of less costly screenings will increase, the more costly assessments and evaluations should decrease. It is expected that the more comprehensive screening, assessment and evaluation process will also result in more offenders being placed in community based treatment rather than being incarcerated, resulting in a reduction in correction costs and more effective rehabilitation. In summary, this was an extensive collaborative effort between our District Judges and the two executive agencies.

Chairman Darrington asked at what stage in the process would the judge order the assessment. **Judge Wood** said following a plea of guilty or finding of guilt. **Senator Davis** discussed with Judge Wood the changes regarding which department pays for the costs of the examinations. **Senator Mortimer** asked if juveniles were addressed in this bill. **Judge Wood** said this bill deals only with adult felons who are convicted. **Senator Bock** asked why it took so long. **Judge Wood** explained that the District Judges didn't come to town until in February. They were trying to get input from the people that really use this and get it right.

Ross Edmunds, Administrator of Behavioral Health, Department of Health and Welfare, supports the bill. He believes this bill will create a better opportunity for them to look at the needs of felony offenders in advance of their sentence and get some treatment services in place. **Senator Lodge** asked how long would it take for the assessment outlined in this bill and what was the cost. **Mr. Edmunds** said it was about a 9 hour process with coordination from start to finish and the cost was approximately \$300. He said the most accurate way to determine the cost is to use the grace period and measure, through a pilot process, the impact if any, and make a budget request for next year. He said they would run the pilot project from May through December so they would have any needed budget data by September. **Senator Davis** said the bill he had in front of him did not speak to a pilot project. **Mr. Edmunds** said the bill has the implementation date of March 1, 2013, providing the opportunity of doing a pilot, and is not in conflict with the current 19-2524 statute. **Chairman Darrington** said as a matter of record in this Committee, the pilot project would go forth according to the statements of Mr. Edmunds and Judge Wood. **Senator Davis** said he wanted to vote for the bill, not the subsequent legislature, and it was his understanding that the two parties got together and have a tentative agreement going forward. He didn't want his vote to be construed to be more than support for H 648.

Director Brent Reinke, IDOC, spoke in favor of H 648 and explained the reason for the delay was their fault. He said with the implementation time frame, there were two factors in regard to the Department of Corrections. He explained that the funds that were collected for the cost of supervision were not able to keep up with the statute requirements that they currently have so between now and July 1st, they would need to lay off, or not fill seven field positions. He said they may not be able to maintain the current number of probation officers. He said knowing this project is from a research perspective, it will help in screening all felons at the front end. He said they need to be prepared to conduct 19 screens a day beginning in March 1, 2013, and they cannot do that at this time. The Department needs the time to be able to retool. They wanted to roll the SUDS project out appropriately and accurately. In order for the staff to be able to do these screens within 7 days and 19 a day from there on, they would need time to be able to retool. In discussions of this redraft and modifications to 19-2524, they came to a very clear agreement that would be the case. **Senator Bock** said he was making an assumption about

this legislation as it appears to him that if there was better screening done, there would be fewer of those folks sent to Corrections and asked if that was correct. **Mr. Reinke** said it means there should be better screening earlier in the process of the 7 days on the screen and the 35 days on what is called a presentence investigation. The more information earlier in the process, the more they can fit the needs of that offender and line him up with the appropriate services earlier. **Senator Bock** asked how in Section (7), page 9, will they start making dents into the level of care that is given in the facilities out there. **Mr. Reinke** asked if he was referring to the Balla Report and he commented there was no connection between the Balla Report and 19-2524. There is no question that there is a connection from the standpoint of the level and type of services under the requirements based on those assessed needs.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll**, to send **H 648** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 651 **Relating to Judges; Relating to Salaries of Judges.** **Patricia Tobias**, Administrative Director of the Courts, explained the bill that would change the annual salary of justices of the Supreme Court, judges of the Court of Appeals, district judges, and attorney magistrate judges beginning July 1, 2012. The annual salaries of the justices and judges would be increased by two percent, the same consideration contemplated for all other state employees. There are no cost of living increases, bonuses, salary incentives or other adjustments that are available to recognize continued excellence. The total fiscal impact of this change for the increased cost of salary and benefits, which are paid from the General Fund, is \$371,700 for FY 2013. The funding for this legislation is already included in the Court's appropriation bill as recommended by Joint Finance and Appropriation. The judges are keeping pace although more are working longer days, longer nights and weekends to do so. Affording judges their first salary increase in four years is the first step in adequately compensating Idaho's judiciary.

MOTION **Senator LeFavour** moved, seconded by **Senator Davis**, to send **H 651** to the Floor with a **do pass** recommendation. In accordance with Rule 39 H, **Senator Lodge** declared she had a possible conflict of interest, but intended to vote. The motion carried by **voice vote**.

Chairman Darrington said there would be another meeting, but was not sure when. He also asked if there were other minutes to be approved.

MOTION **Senator Bock** moved, seconded by **Senator LeFavour**, to approve the minutes of **March 12, 2012** as written. The motion carried by **voice vote**.

MOTION **Senator LeFavour** moved, seconded by **Senator Bock**, to approve the minutes of **March 7, 2012** as written. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 1:55 p.m. Future meetings will be at the call of the Chair.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Tuesday, March 27, 2012
NOTE MEETING TIME

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to Approve:	
	Minutes of March 14, 2012	Senator Vick
	Minutes of March 21, 2012	Senator Bock
<u>H 639</u>	Relating to Contracts	Rep Lyn Luker
	Page Recognition/ Graduation	Alexa Woodland

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Tuesday, March 27, 2012

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, and Bock

ABSENT/ EXCUSED: Senator LeFavour

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:05 p.m. and asked the secretary to call the roll. He asked if there were minutes to approve.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Mortimer**, to approve the minutes of **March 14, 2012** as written. The motion carried by **voice vote**.

MOTION **Senator Bock** moved, seconded by **Senator Lodge**, to approve the minutes of **March 21, 2012** as written. The motion carried by **voice vote**.

H 639aa **Relating to Contracts. Representative Lynn Luker** explained this legislation clarifies existing Idaho Code which voids provisions in contracts that would force Idaho residents to waive their rights to access Idaho courts. He said there were some concerns about these changes affecting the rights to have arbitration agreements. He clarified that it did not do away with arbitration agreements, but makes sure that those arbitrations are preserved in Idaho.

MOTION **Senator Bock** moved, seconded by **Senator Lodge**, to send **H 639aa** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Chairman Darrington thanked the intern, Alicia Lardieri, for her work and presented her with letters of recommendation. **Vice Chairman Vick** commented that Alicia had also done work for him and did a terrific job. **Chairman Darrington** then thanked the Senate Page, Alexa Woodland, for her good work for the Committee and presented her with a gift, a letter of thanks from the Committee and letters of recommendation.

Senator Lodge and **Senator Bock** spoke of their appreciation of Chairman Darrington and the pleasure they have had working with him. He will be missed.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 1:20 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
8:00 A.M.
Room WW54
Thursday, March 29, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Approve Minutes of March 27, 2012	Senator Lodge
RS21570	A Senate Resolution Stating Findings of the Senate and Amending Rule 39 of the Rules of the Senate Relating to Voting	Senator Brent Hill
RS21571	A Senate Resolution Stating Findings of the Senate and Amending Rule 7 of the Rules of the Senate Relating to Employees of the Senate	Senator Brent Hill
RS21569C1	A Senate Resolution Stating Findings of the Senate and Amending Rule 53 of the Rules of the Senate Relating to a Committee on Ethics	Senator Brent Hill
H 660	Relating to Judges, Justices/ Retirement	Representative Lake Patricia Tobias Sr. Judge Barry Wood

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Thursday, March 29, 2012

TIME: 8:00 A.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Mortimer, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator McKague

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 8:02 a.m. and asked the secretary to call the roll. He then asked if there were minutes to approve.

MOTION **Senator Lodge** moved, seconded by **Senator Mortimer**, that the minutes of **March 27, 2012** be approved as written. The motion carried by **voice vote**.

RS 21570 **A Senate Resolution Stating Findings of the Senate and Amending Rule 39 of the Rules of the Senate Relating to Voting.** **Senator Davis** explained that this legislation modifies Rule 39 to make certain each senator has a duty to vote both in Committee and on the floor. The senator has a similar duty to disclose any conflict of interest both in Committee and on the floor.

MOTION **Senator Mortimer** moved, seconded by **Senator Nuxoll**, to print **RS 21570** and send to the floor immediately. The motion carried by **voice vote**.

RS 21571 **A Senate Resolution Stating Findings of the Senate and Amending Rule 7 of the Rules of the Senate Relating to Employees of the Senate.** **Senator Davis** explained that this legislation modifies Rule 7 to remove the requirement of a two thirds vote to remove a member of the Senate.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Mortimer**, to print **RS 21571** and send to the floor immediately. The motion carried by **voice vote**.

RS 21569C1 **A Senate Resolution Stating Findings of the Senate and Amending Rule 53 of the Rules of the Senate Relating to a Committee on Ethics.** **Senator Davis** explained this legislation modifies Rule 53. The complaint shall be in writing, signed and verified and contain one or more of the following:

1. Substantial conduct unbecoming a Senator;
2. A violation of the Rules of the Senate;
3. A violation of any state law that uses public office for private pecuniary gain;
4. A violation of any state law relating to conflicts of interest; or
5. A violation that brings discredit or embarrassment to the Senate or that constitutes a breach of public trust.

The complaint shall be specific and supported by competent preliminary evidence. It shall be provided to the chairman of the committee on ethics by the President Pro Tempore and may be dismissed if not in compliance with this Senate Rule or the alleged violation occurred two years or more before the date of the complaint.

Senator Davis further explained that the committee's investigatory meetings shall be held in executive session. If after investigation, the committee determines no probable cause exists, it shall be dismissed and remain confidential. If a probable cause exists that a violation may have occurred, the committee shall so notify the complaining Senator and the Senator complained against and it shall become a public document.

Senator LeFavour voiced her concerns of a deadlock within the committee even if it was split equally between parties. She feared that one party could possibly be squashed. **Senator Davis** said he believed that both parties must take ownership and have equal responsibility. **Senator Bock** said he would prefer a wholly independent committee, but that would be for another day.

MOTION

Senator Mortimer moved, seconded by **Senator Nuxoll**, to print **RS 21569C1** and send to the floor immediately. The motion carried by **voice vote**. **Senator LeFavour** voted nay.

H 660

Relating to Judges' Retirement and Compensation. **Representative Lake** explained that the Judges Retirement Fund (JRF) was not adequate. In 2011 there were two bills considered, but there were problems with the House. Prior to the close of last session, four House members and representatives of the judiciary looked for a long term solution to the funding issues of the retirement fund. He said that disparate views, ideas, alternatives and philosophies were exchanged. Actuarial studies and analyses were completed.

Patricia Tobias, Administrative Director of the Courts, explained that after eight meetings, and considerable debate and analysis, an agreement was reached on January 26, 2012, and recommended to Governor Otter, Chief Justice Burdick, President Pro Tem Hill and Speaker of the House Denney. There was then a meeting with the executive director of PERSI, Mr. Don Drum, and the PERSI Board, to ensure their ideas and requirements were obtained to transfer the administration of the fund to PERSI. Ms. Tobias called attention to the attached documents with detailed information for the legislation. (Attachment #1)

Judge Barry Wood explained this bill revises the statutes regarding the JRF in order to ensure the stability of the Fund in the years ahead. It was created in 1947 and is the oldest public retirement plan in Idaho and has been funded by a combination of employer contributions, employee contributions, and filing fees in civil cases. The major changes that will be enacted by this bill are as follows:

1. An increase in two steps in the employer's contribution from the current 7% to 10.5%.
2. An increase in two steps in the employee's contribution from the current 6% to 9%.
3. An increase in the civil filing fee contribution to the JRF by \$8 to \$26.
4. There are amendments to two statutory provisions regarding Plan B and would apply to all new judges who take office following the effective date of the legislation: (a) the senior judge service requirement would be increased from 35 days a year to 60 days a year for 5 years; (b) judges who become eligible for retirement only because they are at least 55 years of age and have at least 15 years of service would not be eligible to elect a Plan B retirement.
5. The surviving spousal benefit paid would be rolled back from the current 50% to 30%.
6. The annual cost of living adjustment (COLA) to the retirement benefit would be the same percentage as that provided for PERSI retirees.

7. A transfer of plan administration of the JRF to PERSI upon adoption of the above described funding mechanisms, receipt of an IRS determination letter and the enactment of any changes required by the IRS.
8. A fiscal year-end actuarial evaluation of the JRF, including a specific report on Plan B, which reports shall be provided to the germane legislative committees and the Joint Finance-Appropriations Committee.

Judge Wood explained the organizational structure of the bill and the effective dates. The bill has 13 sections and Section 13 is the effective date provision. He stated that five of the twelve substantive sections of the bill; sections 1, 3, 5, 6, and 10 would go into effect on July 1, 2012. The other seven substantive sections; sections 2, 4, 7, 8, 9, 11 and 12 would go into effect when PERSI assumes responsibility for administration of the JRF. This would occur, as section 13 provides, on the first July 1 occurring at least three months after the PERSI Board informs the Secretary of State that: (1) a determination letter from the IRS has been received ruling that the JRF meets the requirements for a qualified plan, and (2) any changes to the JRF required by the IRS or the determination letter have been made.

Don Drum, Executive Director of PERSI, stated that the IRS was extremely slow in issuing determination letters; for example, PERSI's has been under consideration for four years. There's no reason to believe they won't get one, there's a question as to when it will happen. Often with determination letters, they will initially issue a letter with some corrections they want made and generally those are very specific and easy to accommodate the IRS and then you can reapply which is much quicker response. **Senator Mortimer** asked if Mr. Drum had been involved in negotiations of the Supreme Court with this legislation. **Mr. Drum** said he had been involved once there was consensus with the House and the judges system. At that time, they had reviewed it, understood it, and had the Chairman of the Board attend meetings as well. **Senator Mortimer** asked if he had looked at this to make sure the percentages and the contributions match and were actuarially sound. **Mr. Drum** said he had not looked at it in detail, but he had a lot of trust in Millman, who is also their actuary.

The senators had some discussion with the presenters for clarification. They then thanked the participants involved in the many meetings and discussions to arrive at a consensus in providing a solution for this problem.

Senator Lodge thanked Representative Lake for his work on this legislation. In accordance with Rule 39 H, she declared a conflict of interest.

MOTION

Senator LeFavour moved, seconded by **Vice Chairman Vick**, that **H 660** be sent to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Chairman Darrington said this was an emotional moment for him and that he had probably chaired more committees in the Idaho State Senate than any person who served in the Senate. He has been a chairman since 1984 and done numerous interim committees. And so, he said he would leave us with the words of the orchestra player on the Titanic, "It's been a pleasure to serve with you..." and with that he adjourned the meeting at 9:20 a.m. APPLAUSE.

Senator Darrington
Chairman

Leigh Hinds
Secretary